UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/25
12 June 1990

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 10 (a) of the provisional agenda

ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Report of the Secretary-General on the application of international standards concerning the human rights of detained juveniles prepared pursuant to Sub-Commission resolution 1989/31

CONTENTS

	Page
Introduction	2
I. INFORMATION PROVIDED BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES	3
II. REPLIES TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY	4
A. Colombia	4
B. World Movement of Mothers	8
Annex	
Questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty	9

GE.90-12294/2066B

best copy available

Introduction

1. By its resolution 1989/31 of 1 September 1989, entitled "Application of international standards concerning the human rights of detained juveniles", the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General to update his report concerning the incarceration of children under the age of 18 with adult prisoners (E/CN.4/Sub.2/1987/30), for the consideration of the Sub-Commission at its forty-second session. The Sub-Commission further requested the Secretary-General to submit the resolution to Governments, specialized agencies and non-governmental organizations, asking for their comments on the application of international standards concerning the human rights of detained juveniles, in particular the separation of juvenile and adult offenders in penal institutions, detention pending trial, least possible use of institutionalization, and the objectives of institutional treatment; and decided to continue studying these matters at its forty-second session, under the agenda item entitled "Administration of justice and human rights of detainees".

2. Accordingly, the Secretary-General, on 7 March 1990, addressed appropriate inquiries to Governments, specialized agencies and non-governmental organizations. In order to facilitate the submission of information, the Centre for Human Rights, in consultation with the Centre for Social Development and Humanitarian Affairs, prepared a questionnaire which, together with a copy of resolution 1989/31, was attached to each note verbale or letter.

3. In conformity with Sub-Commission resolution 1989/31, the present report by the Secretary-General on the application of international standards concerning the human rights of detained juveniles and containing the relevant information pursuant to this resolution received as of 16 April 1990 from Governments, specialized agencies and non-governmental organizations, is submitted to the Sub-Commission at its forty-second session.

I. INFORMATION PROVIDED BY THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[Original: English]
[19 February 1990]

1. Detention or imprisonment of asylum seekers or refugees creates serious protection problems for UNHCR. Article 31 of the 1951 Convention, relating to the Status of Refugees provides that refugees who come directly to any country should not be penalized solely on the ground that they entered that country illegally. Detention, often in extreme conditions, has nevertheless become an oft-resorted-to penalty for illegal entry. The growing tendency of some States to detain both refugees and asylum seekers lead UNHCR to submit the subject to the Executive Committee of the High Commissioner's Programme for its consideration in 1986. The Executive Committee adopted a Conclusion (No. 44), setting out guidelines on detention of refugees and asylum seekers whenever it occurs. These included that detention of refugees and asylum seekers should not be automatic and should generally be avoided; where necessary, it should only be on grounds prescribed by law and for specified purposes, such as verification of identity, determination of claim or in cases where refugees or asylum seekers have destroyed their documents. The same conclusion, inter alia, added that asylum seekers who arrive without documents because they were unable to obtain any in their country of origin should not be detained solely for that reason. In all circumstances, it was agreed that refugees and asylum seekers should not be accommodated with common criminals, and should not be located in areas where their physical safety is endangered.

2. Regrettably, years later, the guidelines have yet to be fully respected by States. UNHCR still registers the occurrence of detention of asylum seekers and refugees all over the world. In some refugee situations, asylum seekers are detained for extended periods and sometimes over a year or more. In other cases, refugees and asylum seekers are detained with common criminals, or in appalling conditions, where large numbers of persons are confined in overcrowded cells, even in warehouses and in several instances where they were denied basic amenities such as showers or exercise.

3. There is also the special problem of detention of refugee minors. The guidelines issued by UNHCR in 1988 on Refugee Children stated clearly that because of their special situation, refugee children should not be detained.

4. At the most recent (fortieth) session of the Executive Committee of the High Commissioner's Programme, the Committee in its General Conclusions on International Protection inter alia "noted with deep concern that large numbers of refugees and asylum seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation and reiterated its conclusion No. 44 (XXXVII) which circumscribes the grounds for detention of such person".

5. UNHCR will continue to monitor State practice in this field and intervene as required. However, such action would be much assisted through the co-operation of States, United Nations bodies and the support of non-governmental organizations concerned with refugees and human rights issues.

II. REPLIES TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

A. COLOMBIA

[Original: Spanish]
[22 January 1990]

Detention pending trial

Question of death during detention

1. Colombia's prison and penitentiary legislation contains clear and precise provisions not only for the procedure to be followed in the event of natural or violent death but also in the case of illness of the persons deprived of their liberty.

2. Articles 166 to 174 of chapter III in Decree-Law No. 1817 of 1964 (prison regulations in force) govern the appropriate procedure in the case of death of an inmate, independently of the cause. The regulations stipulate that the costs involved in official action shall be met by the Prison Administration. Precise standards are also established for due diligence in processing the personal effects of the deceased person. In addition to the legislation mentioned above, articles 263 to 268 of chapter II, of the same regulations relate to mentally-deranged persons subjected to security measures and to convicted persons. It should be pointed out that, as part of the policies designed by the Directorate-General for Prisons of Colombia, there has been an ongoing concern to achieve strict compliance with the provisions elaborated in international fora for making detention and sentence-serving dignified and humane. This has been reflected in certain legislative and administrative decisions, the holding of specific events and supervision and monitoring by the services and officials attached to the Directorate.

Torture and other cruel, inhuman and degrading treatment or punishment

3. Article 279 of the Colombian Penal Code provides as follows: "Any person who inflicts physical or mental torture on another shall be liable to imprisonment for a term of one (1) to three (3) years, provided that the act does not constitute an offence punishable with a severer penalty."

4. The wording of this provision embodies a broad notion of "torture" and provides for the imposition of different penalties if the offence is one punishable with a severer penalty and is found to have been the unlawful act of the agent. This category includes offences against the freedom of the individual and in violation of other rights, as specified in Title X of the Penal Code, and offences against life and integrity of the person, provided for in Title XII.

5. At present, and as long as the state of siege lasts, jurisdiction over the offence of torture lies with the Courts of Public Order at first instance and the Superior Court of Public Order at second instance. The existence of the two instances is a clear guarantee of the proper administration of justice.

6. In addition, the new Penal Code for the Armed Forces provides as follows: "Any person who inflicts physical or mental torture on another shall be liable to imprisonment for a term of one to three years, provided that the act does not constitute an offence punishable with a severer penalty"; this rule applies to members of the armed forces on active service committing an unlawful act connected with their duties. Moreover, while this provision contemplates the existence of offences analogous to those provided for under the general law, it constitutes a real innovation in legislating for the offence of torture in military law; it has been in force since 12 December last, when the Government issued Decree No. 2550 of 1988 promulgating the new Penal Code for the Armed Forces.

7. The new rules of military criminal justice also entail compliance with international treaties relating to the treatment of prisoners; their scope extends to all members of the armed forces and the police who commit military or general offences connected with their duties in Colombia or elsewhere, except as provided under international law.

8. Thus article 169 of the new Code provides for imprisonment for a term of one to five years for persons committing offences against international law in regard to use of prohibited weapons, treatment of prisoners and conduct in battle. This rule provides for trial of persons who mistreat a prisoner physically or mentally or misappropriate his belongings.

9. Furthermore, in view of the need to prevent inchoate offences and joint offences from going unpunished, the general criminal law of Colombia provides for those situations, which are of course applicable to every kind of offence, including torture. In doing so, it extends the scope of offences under the general law and makes an effective contribution to preventing impunity: in the case of inchoate offences, by widening the ordinary scope of the offence to include behaviour which takes place prior to the commission of the offence, and in the case of joint offences by providing for conduct by one or more persons which does not amount to the commission of the offence itself; in both cases, the law warns of the specific legal consequences involved.

10. In regard to inchoate offences, article 22 of the Penal Code provides as follows:

> "Any person who embarks on the commission of a punishable act by means of conduct which is capable of completing that act and is unmistakably intended to do so shall, where the act is not completed owing to circumstances beyond that person's control, incur a penalty of not less than one half of the minimum and not more than three quarters of the maximum penalty prescribed for the commission of the offence."

11. Thus in Colombian criminal law, for an inchoate offence to exist, the commission of a punishable act must be begun by appropriate and intentional conduct on the part of the person engaging in it and fail to be completed against that person's will. If these circumstances exist in connection with the offence of torture, the perpetrator of the inchoate offence will be liable in accordance with the prescribed rules of law.

12. In regard to joint offences, Colombian criminal law provides for perpetration, incitement, participation and complicity. Articles 23 to 25 of the Penal Code provide as follows in this respect:

READEX FICHE

13. "Article 23. Principals. Any person who commits a punishable act or incites another person to do so shall incur the penalty prescribed for the offence.

14. "Article 24. Accomplices. Any person who aids the commission of a punishable act or subsequently renders assistance in fulfilment of a promise made prior to its commission shall incur a penalty of not less than half and not more than five sixths of the penalty prescribed for the offence.

15. "Article 25. Attachment of circumstances. Circumstances personal to the perpetrator of the act which increase punishability and circumstances material to the act shall attach to an accessory who has knowledge of them.

16. "Personal circumstances which mitigate or relieve punishability shall not be taken into account except in regard to an accessory to whom they attach or whose acts were determined by those circumstances."

Arrest and detention without justification or for ill-defined or dubious reasons

17. To give effect to the guarantees established by the Constitution and the laws for persons under detention, the Office of the Attorney-General of the Nation ordered a card to be drawn up containing all the rights of the detainee; this card must be read out whenever an arrest occurs. The card will be distributed to over 10,000 officials of the Judicial Police throughout the country and is one more instrument for guaranteeing the due implementation of arrested persons' rights by police officials. The following rights are indicated on the card: to be treated with due respect for the dignity of the human being; to be informed of the reasons for the arrest and the official who ordered it; to have an interview with a lawyer; to have a person of his choice informed of the arrest; to give his own version of the acts with which he is charged to the examining magistrate in the presence of a defence lawyer; to remain silent concerning the charges; in cases of arrest flagrante delicto, the right to be brought before the competent judge within the time allowed for appearance; to be examined by a doctor if he so requests; to receive food, bedding, toilet articles, clothing and reading matter.

18. Once the arrest has taken place (flagrante delicto or by judicial warrant), the Judicial Police shall immediately inform the competent judge of the circumstances under which it took place, specifying the identity of the arrested person and his whereabouts.

19. In no case may the Judicial Police invoke incommunicado detention in response to an agent of the Public Prosecutor's Department.

The death penalty, including the execution of juvenile offenders

20. This question does not apply, since Colombia abolished the death penalty once and for all in 1910.

21. The death penalty was applicable during a large part of the nineteenth century. Article 15 of the 1863 Constitution recognized "the inviolability of human life", for which reason the Federal and State Governments undertook not to prescribe the death penalty in their laws. It was, however, re-established under the régime of General Rafael Nuñez. The original article 29 of the

1886 Constitution provided for the possibility of the death penalty for persons guilty of treason, parricide, murder, arson, assault in criminal gangs, piracy and certain military offences.

22. Some years later, as part of the constitutional reform of 1910, the death penalty, which had been maintained until then, was prohibited. Thus, the current article 29 of the Political Constitution of Colombia stipulates: "The lawmaker may in no case prescribe the death penalty". The provision contained in article 29 is to Colombia's credit, since it places it among those countries which, for humanitarian and criminal policy reasons, have banished this aberrant legal act from their penal codes.

Objectives of institutional treatment

(a) Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

Limitations on the use of force by law enforcement officials

23. Article 55 of Decree No. 1817 of 1964 (prison regulations in force) stipulates that "Wardens shall take all legal measures to ensure that detention and penalties involving deprivation of liberty shall, in all cases, provide accused and convicted persons with an opportunity for moral regeneration and social rehabilitation and shall subordinate the entire operation of the establishments in their charge to this objective".

24. According to article 90, "In no case may wardens inflict punishments on prisoners, or use violence or ill-treatment against them. When a warden who is not authorized to punish prisoners finds it necessary to impose his authority on a prisoner, he shall place the prisoner incommunicado detention and so inform his superior without delay."

25. Article 49, paragraph B (11) of Decree No. 2655 of 1973 qualifies as a serious offence with grounds for dismissal: "physically ill-treating prisoners and imposing on them punishments that are not prescribed in the regulations".

Privatization of prisons

26. The process of privatizing basic services within the prison organization has been occurring as part of a plan to improve the living conditions of the prison population, without allowing the process to have an undue impact on the basic and essential elements of the nature of the institution.

27. The process has been applied, inter alia to catering services for food. In the main prison centres in the country, catering is now carried out by private enterprises and this measure has led to a noticeable improvement in the quality of the food.

(b) What types of educational or rehabilitative programmes are provided in detention facilities for juvenile offenders?

28. Associating private enterprise with the skills available inside prisons: for the twofold purpose of associating society as a whole with the process of social rehabilitation and increasing the use of prisoners' skills, attempts are being made to associate companies and private individuals with the skills available in prison, on the basis of article 182 of Decree-Law No. 1817 of 1964 (Prison Regulations).

B. WORLD MOVEMENT OF MOTHERS

[Original: English]
[23 March 1990]

Separation of adults and juveniles in penal institutions

1. The World Movement of Mothers found that separating juvenile from adult offenders in penal institutions is not always an ideal solution. Unfortunately, these young people, left to themselves, are often completely lost and tend to encourage their worst mutual tendancies. At times, indeed, older prisoners have been known to exercise a reassuring influence and a certain stability.

2. In other words, in the experience of the World Movement of Mothers, the problem is not as simple as one would like to believe. Extreme care must be taken as to co-inmates, whatever their age. Naturally, the least possible use of institutionalization is preferable. Close supervision and family placement can be helpful.

Annex

QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. Definition of "juvenile" under national law

A. What is the statutory definition of "juvenile" in your country?

B. What is the age of criminal responsibility in your country? Please describe:

1. Absolute minimum age limit;

2. Other age limits, if any, for criminal responsibility, differing from that of adults.

C. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

D. Does the law allow juveniles to be proceeded against for "status offences", that is, any specific behaviour that would not be punishable if committed by an adult? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 3.1.)

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose, are separate detention facilities used? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.4.)

E. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.2.)

F. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or similar procedure?

G. What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances?

III. Least possible use of institutionalization

A. Does your country practise "diversion", enabling the disposition of a juvenile case without resorting to formal trial by the competent authority? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 11.1.)

B. What is the availability and extent of application to juvenile offenders of the following disposition measures:

1. Care, guidance and supervision orders;

2. Probation;

3. Community service orders;

4. Financial penalties, compensation and restitution;

5. Intermediate treatment and other treatment orders;

6. Orders to participate in group counselling and similar activities;

7. Orders concerning foster care, living communities or other educational settings;

8. Commitment to an open detention facility;

9. Commitment to a closed detention facility;

10. Other relevant orders.

(See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 18.1.)

C. In what percentage of cases are non-custodial versus custodial measures applied to juvenile offenders?

D. What are the main obstacles, if any, to full compliance with the principle that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 19.1.)

IV. Objectives of institutional treatment

A. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

B. What types of educational or rehabilitative programmes are provided in detention facilities for juvenile offenders?

C. Do specialized juvenile courts exist, and if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

D. Can any authority other than a juvenile court deprive juveniles of their liberty? If so, under what circumstances?

E. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

F. Can a juvenile be sentenced to detention for an indeterminate period? If so, which authority determines when the juvenile offender can be released?

G. Which authority determines the institution best suited for the treatment of a juvenile offender?

H. What are the main obstacles, if any, to the full compliance with the principles that promoting the social reintegration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty? (See Convention on the Rights of the Child, Art. 40; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.1.)

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.3.) If so, what are the main obstacles, if any, to full compliance with this principle?

B. Are there any special situations, recognized by the law, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned? If so, please describe and provide the frequency of these situations in practice.

C. Are there exceptional situations in which juvenile offenders are not kept separate from adults because of practical difficulties? If so, please provide the frequency of these situations in practice and describe the safeguards, if any, applied in order to protect the juveniles and prevent possible abuses.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against risks of "criminal contamination" from adult offenders?

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/25/Add.1
27 July 1990

ENGLISH
Original: ARABIC/ENGLISH/
FRENCH/RUSSIAN/
SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 10 (a) of the provisional agenda

ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Report of the Secretary-General on the application of international standards concerning the human rights of detained juveniles prepared pursuant to Sub-Commission resolution 1989/31

Addendum

CONTENTS

Chapter		Page
I.	REPLIES RECEIVED FROM GOVERNMENTS TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY	1
	A. Argentina	1
	B. Bahamas	6

CONTENTS (continued)

Chapter		Page
	C. Bahrain	10
	D. Bolivia	13
	E. Colombia	17
	F. Cuba	23
	G. Iraq	26
	H. Jamaica	30
	I. St. Vincent and the Grenadines	32
	J. Chad	34
	K. Tunisia	37
	L. Union of Soviet Socialist Republics	39
	M. Venezuela	42
II.	REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY	48
	A. Association mondiale des amis de l'enfance	48
	B. International Federation of Social Workers	52
	C. Rädda Barnen	59
	D. Regional Council of Human Rights in Asia	63
III.	INFORMATION PROVIDED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS	64
IV.	INFORMATION PROVIDED BY THE FRIENDS WORLD COMMITTEE FOR CONSULTATION	65

Annex

Questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty

I. REPLIES RECEIVED FROM GOVERNMENTS TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

A. ARGENTINA

[Original: Spanish]
[11 June 1990]

I. Definition of "juvenile" under national law

A. What is the legal definition of "juvenile" in your country?

The law defines a juvenile as a person under the age of 21. For the purpose of the criminal law, juveniles are persons under the age of 18. This is so because, as from that age, the procedural and criminal régime applicable to juveniles is the same as that for persons over 21 years of age, with the sole exception that detention takes place in specialized institutions. In the rest of this report, therefore, "juvenile" should be understood to mean a person under 18 years of age.

B. What is the age of criminal responsibility in your country? Please describe:

- absolute minimum age limit;

- other age limits, if any, for criminal responsibility, differing from that of adults.

Juveniles under 16 years of age are not punishable for any offence. Juveniles between 16 and 18 years of age are punishable only for prosecutable offences punishable by imprisonment for more than two years.

C. At what age may a person charged with an offence be tried as an adult?

At 18 years of age.

D. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

There are none.

E. Does the law allow juveniles to be proceeded against for "status offences", that is, any act that would not be punishable if committed by an adult? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 3.1.)

There are no juvenile status offences.

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

The law permits the detention pending trial of chargeable juveniles (i.e. juveniles between 16 and 18 years of age prosecuted for serious offences) only when the nature of the act and the personal characteristics of the juvenile make it absolutely necessary to take this action.

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

The police may detain a juvenile when he is found in flagrante delicto or when there is strong evidence that he is guilty of having committed an offence. The police must place him at the disposal of the judge immediately.

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

In practice, juveniles are hardly ever detained pending trial. Only when an extremely serious offence has been committed (e.g. homicide) or when it is clear that the person concerned is ill, do judges use this procedure. In such exceptional cases, detention may continue for the whole period of the trial until sentencing, but is generally not imposed if the juvenile's conduct improves.

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose, are separate detention facilities used? (See International Covenant on Civil and Political Rights, art. 10; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.4.)

Yes. Exceptionally, juveniles detained pending trial are put together with convicted juveniles, but only with those who are well behaved and are at an advanced stage of treatment.

E. If the law permits detention of juveniles by the police, do the police have special facilities exclusively for juveniles? If not, what type of facilities are employed for the detention of juveniles?

There is a police station for juveniles which comes under the federal police, where juveniles detained by the police should theoretically be lodged, but for reasons of space it is almost exclusively juvenile offenders who are held there. It is planned to equip a larger building. Practically all juveniles are therefore detained at ordinary police stations, but they are kept apart from adults.

F. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.2.)

Yes, they do exist and are applied by the judges in almost all cases.

G. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or similar procedure? (International Covenant on Civil and Political Rights, art. 9.)

A juvenile may appeal against detention pending trial. The appeal is heard by a collegiate court, which may confirm or rescind the decision of the judge. A juvenile may also appeal against the judgement rendered concerning him at the end of the trial (final order).

H. What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances? (International Covenant on Civil and Political Rights, art. 9.)

There are no such obstacles.

III. Least possible use of institutionalization

A. Is it possible in your country to dispose of juvenile cases by "diversion", that is the disposition of a juvenile case without resorting to formal trial by the competent authority? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 11.1.)

It is not possible.

B. What is the availability and extent of application to juvenile offenders of the following disposition measures:

1. Care, guidance and supervision orders;

2. Probation;

3. Community service orders;

4. Financial penalties, compensation and restitution;

5. Intermediate treatment and other treatment orders;

6. Orders to participate in group counselling and similiar activities;

7. Orders concerning foster care, living communities or other educational settings;

8. Commitment to an open detention facility;

9. Commitment to a closed detention facility;

10. Other relevant orders.

(See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 18.1.)

Specific measures such as 1, 2, 3, 5, 7, 8 and 9 are available and are applied; for 4 and 6 the answer is negative.

C. In what percentage of cases are non-custodial versus custodial measures applied to juvenile offenders?

In 95 per cent of cases non-custodial measures are applied.

D. What are the main obstacles, if any, to full compliance with the principle that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 19.1.)

There are no obstacles.

IV. Objectives of institutional treatment

A. Are there laws outside the penal law field under which juveniles can be deprived of their liberty, for example, in connection with a state of emergency or in cases relating to immigration?

Juveniles may be deprived of their liberty for contravention of the migration regulations, pending enforcement of a deportation order. In such cases they must be held in "suitable establishments".

B. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

The law provides that penal sanctions may be imposed on juveniles between the ages of 16 and 18 "if the nature of the act, the record of the juvenile, the results of supervisory treatment and the direct impression of the judge make it necessary to impose a penalty".

The law provides that such sentences must be served in "specialized institutions" but does not define the object of the treatment to be applied.

The penitentiary law applicable to adults provides that "the object of punishment of deprivation of liberty is the social rehabilitation of the convicted person".

C. What types of educational or rehabilitative programmes are provided in detention facilities for juvenile offenders?

They are given primary schooling and vocational training.

D. Do specialized juvenile courts exist, and if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

Yes; there are specialized courts and they try all juvenile cases.

E. Can a criminal court or any authority other than a juvenile court deprive juveniles of their liberty? If so, in what circumstances?

A court for adults may deprive a juvenile of his liberty provisionally, until it declares that it lacks jurisdiction and hands him over to the juvenile court.

F. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

Punishable juveniles (between 16 and 18 years of age, for serious offences) may be sentenced to the same penalties as adults. The maximum term of imprisonment under the Penal Code is 25 years. A juvenile may also be sentenced to life imprisonment when that is the appropriate penalty for the offence committed.

The law authorizes the judge, in cases involving punishable juveniles, to reduce the penalty prescribed for the offence by the same amount as is prescribed for an attempted offence (to one third of the minimum or half the maximum).

G. Can a juvenile be sentenced to detention for an indeterminate period? If so, which authority determines when the juvenile offender can be released?

A punishable juvenile may be sentenced to imprisonment or rigorous imprisonment for life, if these are the penalties prescribed for the offence committed. In such cases it is for the judge to determine when the juvenile can be granted conditional release, for which the law requires that he must have served at least 20 years of the sentence and have complied with the prison regulations.

H. Which authorities are empowered to determine the institution best suited for the treatment of a juvenile offender?

The judge and the administrative authority responsible for administration of the specialized institutions.

I. What are the main obstacles, if any, to full compliance with the principle that promoting the social re-integration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty? (See Convention on the Rights of the Child, article 40; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.1.)

One important obstacle is lack of funds to provide the system with enough efficient specialized institutions. But perhaps the most serious obstacle is "cultural", i.e. the conviction of most people that some juvenile offenders cannot be reformed.

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults? (See International Covenant on Civil and Political Rights, article 9; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.3.) If so, what are the main obstacles, if any, to full compliance with this principle?

Yes. There are no serious obstacles to compliance with this principle.

B. Are there any special situations, recognized by the law or regulations, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned? If so, please describe and provide the frequency of these situations in practice.

None.

C. Are there situations in which juvenile offenders are not kept separate from adults because of practical difficulties? If so, please provide the frequency of these situations in practice and describe the safeguards, if any, applied in order to protect the juveniles and prevent possible abuses.

This can only occur in exceptional cases at a police station owing to lack of space.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against dangers resulting from contact with adult offenders?

They do not exist.

B. BAHAMAS

[Original: English]
[25 May 1990]

I. Definition of "juvenile" under national law

A. A "juvenile" is a person who proves to be, or in the absence of legal proof to the contrary, appears to the Court to be of or above 7 years of age and under 18 years of age.

B. Nothing is an offence which is done by a person under seven years. Nothing is an offence which is done by a person of or above seven and under 12 years of age who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct in the matter in respect of which he/she is accused.

C. Eighteen (18) years old.

D. Section 7 (1) a, b, c and Section 8 (5) of the Children and Young Persons Act (Administration of Justice) states that:

1. A charge made jointly against a child or young person and a person who has attained the age of 18 years shall be heard by a magistrate; and

2. Where a child or young person is charged with an offence the charge may be heard by a magistrate if a person who has attained the age of 18 years is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence; and

3. Where in the course of any proceedings before a magistrate, it appears that the person to whom the proceedings relate is a child or young person, nothing in this section shall be construed as preventing the court, if it thinks fit to do so, from proceeding with the hearing and determination of those proceedings;

4. Where a child or young person is brought before a juvenile court charged with a homicide, or where a young person is brought before a juvenile court charged with any other indictable offence and either that court does not consider it expedient to deal with the case summarily or the person charged does not agree to be tried by the juvenile court, the court shall remit the case to a magistrate to be dealt with in accordance with the provisions of the Magistrate Act, the Criminal Procedure Code Act and the Penal Code.

E. Not applicable.

II. Detention pending trial

Section 34 and 35 of the Children and Young Persons Act (Administration of Justice) states that:

A. Where a person apparently under the age of 18 years is apprehended, with or without a warrant, and cannot be brought forthwith before a court the officer to whom such a person is brought shall inquire into the case, and may in any case:

1. Unless the charge is not of homicide or other grave crime; or

2. Unless it is necessary in the interests of such person to remove him from association with any undesirable person; or

3. Unless the officer has reasons to believe that the release of such person would defeat the end of justice.

Release such a person on a recognizance with or without sureties, for such amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge, being entered into by him or by his parent or guardian or other responsible person.

Where a person apparently under the age of 18 years having been arrested is not so released the aforesaid officer to whom such a person is brought before a court unless the officer certifies:

(a) that it is impracticable to do so; or

(b) that he is of so unruly or depraved a character that he cannot be safely so detained; or

(c) that by reason of his state of health or his mental or bodily condition it is inadvisable so to detain him.

Section 36 (1) and (2) of the Children and Young Person Act (Administration of Justice) states that:

B. 1. Any court on remanding or committing for trial a child or young person who is not released on bail, shall instead of committing him to prison, comit him to custody in a place of detention for the period for which he was remanded or until he is thence delivered in due course of law.

Provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

2. A commitment under this section may be varied or, in the case of a young person who proves to be so unruly a character that he cannot be safely detained in such custody or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court acting in or for the place in or for which the court which made the order acted, and if it is revoked the young person may be committed to prison.

C. Less than 5 per cent. Average length of detention may vary.

D. Section 33 of the Children and Young Persons Act (Administration of Justice) states that:

Arrangements shall be made for preventing a child or young person while detained in a police station or while being conveyed to or from any criminal court, from associating with an adult (not being a relative) who is charged with an offence other than an offence which the child or young person is jointly charged with and for ensuring that a girl (being a child or young person) shall, while so detained, having been conveyed or waiting, be under the care of a woman.

E. Yes.

F. Yes.

G. Yes.

H. Whenever a person is charged with a homicide that person must be detained. (Section 69 of the Criminal Procedure Code.)

III. Least possible use of institutionalization

A. Not possible.

B. Section 50 of the Children and Young Persons Act (Administration of Justice) states that:

Where a child or young person charged with any offence is tried by any court and the court is satisfied of his guilt, the court shall take into consideration the manner in which under the provisions of this or any other Act or for otherwise enabling the court to deal with the case, the case should be dealt with, and may deal with the case:

(a) By dismissing the charge; or

(b) By discharging the offender on his entering a recognizance; or

(c) By so discharging the offender and placing him under the supervision of a probation officer; or

(d) By committing the offender to the care of a relative or other fit person or of an institution, such relative, person or institution being willing to receive him; or

(e) By sending the offender to the industrial school; or

(f) By ordering the offender to be caned; or

(g) By ordering the offender to pay a fine, damages or costs; or

(h) By ordering the parent or guardian of the offender to pay a fine, damages or costs; or

(i) By ordering the parent of the offender to give security for his good behaviour; or

(j) By committing the offender to custody in a place of detention provided under this Act; or

(k) Where the offender is a young person by sentencing him to prison; or

(l) By dealing with the case in any other manner in which it may legally be dealt with.

Provided that nothing in this section shall be construed as authorizing the court to deal with any case in any manner in which it could not be dealt with apart from this section.

C. About 20 per cent.

D. There are no main obstacles.

IV. Objectives of institutional treatment

A. Section 40, subsection 4 of the Bahamas Immigration Act states that if a person is found in the country illegally he may be charged, and if found guilty of the offence, detained subject to deportation. Juveniles are detained in a juvenile centre.

B. Yes.

C. The Boys and Girls Industrial Schools are provided with up-to-date educational facilities as are children that attend all Ministry of Education schools.

D. Yes, the Juvenile Panel.

E. Yes.

F. Life sentence, if found guilty of a homicide or indictable offence by the court.

G. Yes, Executive Clemency.

H. Parliament/courts.

I. Nil.

V. Separation of adults and juveniles in penal institutions

A. Yes, there are no main obstacles.

B. No.

C. No.

D. Nil.

C. BAHRAIN

[Original: English]
[7 June 1990]

I. Definition of "juvenile" under national law

A. A juvenile in "Bahrain Juvenile Law" is any person up to 15 years old.

B. The absolute minimum age limit is seven. Other age limits: anyone under the age of 15 years is not accountable for his criminal action.

C. No, there are no conditions and procedures under which juveniles are tried as adults.

D. Yes, there is specific behaviour that would not be punishable if committed by an adult, such as delinquency.

II. Detention pending trial

A. The law permits the detention, pending trial, of juveniles by court order in the following circumstances:

1. If in the interest of the juveniles it is necessary to detain them until the investigation is finished;

2. If their guardians are found to be unsuitable or refuse to be responsible for them;

3. If they are homeless juveniles and do not live most of the time in their homes;

4. If it is suspected that the juveniles will commit further offences before trial.

B. The juvenile should be detained only by a court order. The police may detain the juvenile for a few hours only if it is necessary prior to obtaining the court order.

C. There are about 2 per cent of juveniles charged with offences who are detained pending trial.

D. Yes.

E. Yes, the law permits detention of juveniles by women police. They have special facilities exclusively for juveniles.

F. No.

G. No. This is our principle with detention pending trial of juveniles.

III. Least possible use of institutionalization

A. A person who is 15 years and under may be dealt with by the court if in need of care, control or guardianship until he attains the age of 21.

B. 1. Available.

2. Available.

3. Not available.

4. Not available.

5. Available.

6. Available, but not used until now.

7. Not available.

8. Not available.

9. Available.

10. Available.

C. Non-custodial cases 98.75 per cent

Custodial cases 1.25 per cent.

D. There are no obstacles to placement of juveniles in an institution which should always be a disposition of last resort, but there are obstacles to the minimum necessary period. If the juvenile who is placed in an institution has too many difficulties with his family, most come from broken homes, the institution requires time to prepare the family to look after the child properly.

IV. Objectives of institutional treatment

Juveniles can be deprived of their liberty outside the penal law field if their is an immigration order to deport the whole family because it is staying in the country illegally. The juveniles within this family stay in juvenile detention until the time of deportation.

A. Yes, it does.

B. There are schools in the Detention Centre where juveniles can study according to their educational standard, and complete their study if they wish at government schools after release. There are many rehabilitation programmes in the Centre and after release.

Juveniles receive social care for themselves and their families, educational care, job training, health care, and programmes for their spare times inside the Centre. All these programmes are arranged to prepare juveniles for incorporation again into outside society.

C. Yes, there is one juvenile court which is sufficient to handle all juvenile cases.

D. No.

E. The maximum period for delinquency is 3 years, for simple crimes 5 years and for serious crimes 10 years.

F. Yes, the Juvenile Court has the authority to release the juvenile offender on the recommendation of reports received from the social worker at the Detention Centre, which are submitted every six months.

G. The Juvenile Court with the help of the juvenile social report presented by the social worker of the women's police.

H. There are no obstacles to this principle.

V. Separation of adults and juveniles in penal institutions

A. Yes, juveniles deprived of their liberty are kept separate from adults. There are no obstacles.

B. There are no situations like that.

C. There are no situations like that.

D. No.

D. BOLIVIA

[Original: Spanish]
[30 May 1990]

Children arouse the protective instinct. Their vulnerability and innocence require special care. Nevertheless, in many countries children are still unjustly imprisoned, tortured and murdered.

QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. Definition of "juvenile" under national law

A. Under Bolivian law a juvenile is a person of either sex aged under 21 years (Constitution, art. 41; Juvenile Code, art. 56; Civil Code, art. 47).

B. Bolivian law distinguishes between chargeable and non-chargeable juveniles. The former reach the age of criminal responsibility at 16 and are under the jurisdiction of the ordinary courts (Penal Code, art. 5; Code of Penal Procedure, art. 60; Juvenile Code, art. 56). Non-chargeable juveniles, i.e. those below the age of 16 years (Juvenile Code, art. 113 and 116), are subject to the jurisdiction and special procedure of the juvenile courts, which carefully examine the social and family background of a juvenile offender, his personality and the reasons for his misconduct, and consider possible grounds for ordering suitable assistance and protection, rather than deprivation of liberty, as in the case of chargeable juveniles.

Chargeable juveniles, i.e. those between 16 and 21 years of age, are not treated in the same way as adults, in as much as they are assisted at every stage of the proceedings by a representative of the Institute for Juvenile Care (Juvenile Code, art. 56) and are the subject of a biophysical, social and pedagogical report (Juvenile Code, art. 57) prepared by the Welfare Department of the Protection Agency, or a social institution whose function is to inform the regular judge about the juvenile's personality and the personal and external factors that have contributed to the commission of an act legally classified and punished as an offence.

C. A juvenile has criminal responsibility at the age of 16, and is then subject to the jurisdiction of the ordinary courts.

D. Chargeable juveniles under the jurisdiction of the ordinary courts are not tried in the same way as adults, as between the ages of 16 and 21 special legislation on juveniles grants them various advantages. Thus, all the investigations in the case must be carried out in the presence of a legal representative of the Juvenile Welfare Agency, failing which the procedure is void. The biophysical, social and pedagogical report mentioned above must be produced by DIRME and prepared by a multi-disciplinary team (social worker, psychologist, doctor, educator) and the report is submitted as evidence on behalf of the juvenile. In addition, chargeable juveniles between the ages of 16 and 18 are entitled to conditional release (Code of Penal Procedure, art. 196, subpara. 4) and juvenile orphans who have lost both parents, who suffer from material neglect or whose parents are indigent are released on bail bond (Juvenile Code, art. 60).

Thus chargeable juveniles i.e. those between 16 and 21 years of age, are not tried as adults.

E. Both chargeable and non-chargeable juveniles who commit minor offences and contraventions are tried by the juvenile courts, as the acts committed constitute minor misconduct that only calls for a warning (Juvenile Code, art. 183, subpara. (a)).

II. Detention pending trial

In this connection it is necessary to distinguish between chargeable and non-chargeable juveniles.

If the former commit an act which the law classifies and punishes as an offence, they come under the jurisdiction of the ordinary courts, which order them to be detained in an ordinary prison.

As regards non-chargeable juveniles (those under 16 years of age), if they exhibit what the Juvenile Code describes as gravely disturbed behaviour, the juvenile court orders them to be detained immediately in an observation and diagnosis centre for a period of 30 days, during which studies are carried out for the biological, psychological, social and pedagogical report (Juvenile Code, art. 147).

After this period, the report is submitted to the juvenile court, which takes the appropriate measures, and either confirms the juvenile's detention or orders his conditional release.

A. When a chargeable juvenile commits a minor offence or contravention, the juvenile court does not order him to be detained unless the case so requires (neglected juveniles) (Juvenile Code, art. 145).

B. Here, too, clarification is required in regard to chargeable and non-chargeable juveniles.

Chargeable juveniles who have committed an offence are subject to police action, for a period not exceeding 48 hours, for the purposes of the preliminary investigation, after which they are handed over to the legal representative of the juvenile protection agency.

Juveniles under 16 years of age, i.e. non-chargeable juveniles, are not subject to police action, which is prohibited, and police forces dealing with cases involving non-chargeable juveniles must inform the juvenile court immediately (Juvenile Code, art. 206).

C. Although article 58 of the Juvenile Code provides that juveniles aged over 16 and under 21 may be deprived of their liberty if necessary, they must be held in special sections of penal establishments and kept completely apart from adult prisoners. However, this condition is not always complied with, owing to lack of the necessary prison accommodation.

D. In the case of chargeable juveniles i.e. those aged between 16 and 21 years, the ordinary criminal courts are empowered to adopt alternative measures suited to the personality of the juvenile, on the basis of the biological, psychological, social and pedagogical report.

E. In the case of non-chargeable juveniles, the juvenile courts may append to their judgements: (a) a warning, (b) a reprimand, (c) an order for internment in the home, (d) a conditional release, (e) a short or long period of detention in an establishment of the DIRME.

F. Criminally responsible juveniles are entitled to all the ordinary and extraordinary remedies available under Bolivian law and may lodge an appeal, either themselves or through the legal representative of the juvenile protection agency.

G-H. There are no obstacles, as chargeable juveniles are protected by our criminal law, and this exceptional case is covered by articles 56, 57 and 58 of the Juvenile Code.

III. Least possible use of institutionalization

A-B. Chargeable juveniles are subject to the provisions of the Penal Code, whereas non-chargeable juveniles come under the jurisdiction of the juvenile courts, whose administration of justice is essentially corrective and far removed from the formalities of ordinary justice.

They are responsible for adopting, confidentially and in individualized form, the most appropriate corrective and protective measures in each particular case. For this purpose they have available a multidisciplinary team which provides guidance concerning conditional release, internment in the home, brief or prolonged detention in an observation and diagnosis centre for men or women (confinement, as there are no open centres).

C-D. There are no obstacles, as the ordinary criminal court is empowered to order the detention or release of chargeable juveniles on the basis of the biological, psychological, social and pedagogical diagnosis.

IV. Objectives of institutional treatment

A. There are no laws outside the penal law field under which chargeable juveniles can be deprived of their liberty.

B. The biological, psychological, sociological and pedagogical diagnosis of juveniles (Juvenile Code, arts. 57 and 147) is required both by the special legislation on juveniles and by the criminal law.

C. Such programmes are at present provided by the juvenile courts as there are no specialized centres (treatment centres). Juveniles who fail to comply with the law or show highly disturbed behaviour are totally unprotected by the rights they enjoy even though these are laid down in the Family Code and the Juvenile Code. At present such programmes are limited to mere supervision of minors with behavioural problems by social workers from the social welfare department of the Regional Directorate for Minors.

D. There are juvenile courts with special jurisdiction within the executive branch in the capital of each department. They are collegiate courts, and their jurisdiction is restricted to the trial of non-chargeable juveniles (under 16 years old) showing gravely disturbed behaviour (involving offences) and the protection of children who are neglected or in danger. Accordingly, their procedure is oral and closed. The orders and judgements of juvenile courts are not final.

At present, the jurisdiction of the juvenile courts covers only non-chargeable juveniles i.e. those under 16 years of age. Moreover, their judgements and the measures they take on behalf of juveniles may be set aside by the ordinary courts. As the juvenile courts only try cases involving juveniles under 16, those aged between 16 and 21 years do not enjoy any special protection, being subject to the jurisdiction of the ordinary courts in criminal cases, rather than to the special jurisdiction of special courts. Accordingly the juvenile court must be responsible for examining their social and family background, personality and the reasons for their misconduct.

The number of juvenile courts for each departmental capital is insufficient in view of the fact that their jurisdiction covers the criminal, family, civil and labour spheres.

It will be seen from the above that not all cases involving juveniles are tried by special juvenile courts.

E. The ordinary criminal courts are competent to deprive chargeable juveniles (16-21 years old) of their liberty while the juvenile courts may adopt the same measure for non-chargeable juveniles (under 16 years old).

F. Since chargeable juveniles are subject to the criminal law, the period for which they may be deprived of their liberty is laid down and governed by the Criminal Code and the Law on the Execution of Penalties and Security Measures.

When non-chargeable juveniles show gravely disturbed behaviour, the juvenile courts order them to be detained in an observation centre for a specified time, not indefinitely.

G. Where non-chargeable juveniles are concerned, it is the juvenile courts that decide in which establishment they are to be detained.

V. Separation of adults and juveniles in penal institutions

A-B-C. Article 58 of the Bolivian Juvenile Code provides that juveniles between the ages of 16 and 21 years deprived of their liberty shall be held in special blocks separate from those used for adult prisoners. This legal provision is not implemented owing to the lack of adequate facilities and trained personnel.

In general, it may be said that legal protection of juveniles in Bolivia is not at variance with international legal treaties such as the International Covenant on Civil and Political Rights and the Convention on Human Rights. It must be recognized that in many respects the relevant Bolivian legislation is highly protective and advanced, though it is far from being fully applied in spite of having been in force for a long time.

E. COLOMBIA

[Original: Spanish]
[29 May 1990]

I. Definition of "juvenile" under national law

A. What is the legal definition of "juvenile" in your country?

According to the definition in article 28 of Decree 2737 of November 1989 of the present Juvenile Code, "a juvenile is a person who has not yet reached the age of 18 years". The Decree adds that "when the age of the person requiring the protection provided for in this Code is uncertain and there are reasonable grounds for doubt, before adopting measures applicable to adults, the judge shall determine the person's age by the tests established by law". The tests recognized by Colombian civil procedural law are as follows: a statement by the party concerned, a sworn statement, the testimony of third-parties, expert opinion, judicial examination, documents, evidence and any other means that may help the judge to decide.

B. What is the age of criminal responsibility in your country? Please describe the absolute minimum age limit.

According to article 165 of the Juvenile Code, "Juveniles aged under 18 years are considered, for all purposes, to have no criminal responsibility".

The law also provides that a juvenile offender between the ages of 12 and 18 years "shall be assisted throughout his trial by the Family Advocate and his proxy, if any. The juvenile's parents may participate in the trial".

C. At what age may a person charged with an offence be tried as an adult?

In accordance with the provisions referred to above, Colombian law now in force has specifically set the age of 18 years as the limit determining majority and, consequently, criminal responsibility.

D. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

There are no legal provisions on this matter. The law makes a distinction for procedural purposes between offences committed by juveniles between the ages of 12 and 18 years and those committed by juveniles under 12. In the case of the former, article 167 of the Juvenile Code provides that offences shall be tried in the sole instance by "juvenile courts and special family courts", whose main object shall be to ensure that the juvenile receives a proper upbringing and is normally integrated into the family and the community. As regards juveniles under 12 years of age, article 168 of the Code provides that cases involving them shall be dealt with by the Family Advocates, in order to give the children "the special protection they require and ensure that they are properly brought up. The Family Advocates are also required to deal with minor offences committed by juveniles under 18 years old.

It should be added that the juvenile courts and special family courts "shall be assisted by an interdisciplinary team, which shall advise the judge as to the most appropriate measures for the juvenile, and work together with the juvenile and his family while the measures are being applied". This team comprises, as a minimum, a doctor, a psychologist or educational psychologist and a social worker (Juvenile Code, arts. 168 and 169).

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

Where it is clearly established that a juvenile has committed an offence, the following measures are prescribed by article 204 of the Juvenile Code:

(a) A warning to the juvenile and the persons responsible for him, which consists in the judge drawing his attention and that of his parents or guardians to the offence he has committed and exhorting them to respect and observe the rules of family and social life in the future.

(b) The imposition of rules of conduct comprising clearly specified obligations and prohibitions ordered by the court, in particular educational measures.

(c) Conditional release, i.e. the juvenile is handed over to his legal representatives, parents or guardians on condition of acceptance of the programmes, guidance and follow-up measures of the court or the ICBF (Colombian Institute of Family Welfare) managed by specially appointed officials, and with the obligation to appear periodically before the judge.

(d) Placement in an institution, ordered by the judge when none of the above measures are appropriate owing to the personality of the juvenile and the nature of his family environment, the nature of the offence and the circumstances in which it was committed. Placement may be in a public or private institution operated on an open, semi-open or closed system as appropriate.

These measures may be executed directly by the court or through the ICBF, with the participation of the family and, so far as possible, that of the community.

Faced with the disturbing increase in juvenile delinquency and the seriousness of the criminal offences committed by juveniles under 18 years old, in March 1990 the National Government enacted Decree 566, whereby the entry into force of the new Juvenile Code was postponed for a period of five years, and it was provided that juveniles between the ages of 16 and 18 years, found guilty of the offences of rebellion, sedition, riot, drug trafficking or related offences, or of offences covered by the Anti-Terrorist Law, should be sent to, or detained in, the juvenile blocks now available in Colombia's prisons, subject to the security and protection measures prescribed by law.

The purpose of this measure was to allow the Colombian Institute of Family Welfare sufficient time to implement the measures prescribed in the Juvenile Code and to build suitable establishments for adolescents guilty of this type of offence.

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

On account of the exceptional circumstances now obtaining in Colombia as regards public order, the National Government has promulgated specific regulations under the powers granted to the Executive by the declaration of the state of siege, which, by reason of the serious implications of the acts involved, in some cases authorize detention and holding persons incommunicado for the periods and under the conditions specified. However, the legislation relating to juveniles provides that when a juvenile is arrested while committing an offence or if the judge so orders, he shall be taken, preferably by the juvenile police, to a specialized juvenile reception centre that affords the proper guarantees. If there is no such centre, he must be held in a secure place separate from the accommodation in which adults are detained. In addition, juveniles must be placed at the disposal of the judge or competent authority on the first working day following the date of their arrest (Juvenile Code, arts. 183 and 184).

However, if a juvenile between the ages of 12 and 18 years is implicated in a criminal investigation carried out by the ordinary courts, "copies of the relevant information must be sent immediately to the competent judge". The rule adds that "If the juvenile is in detention, he shall immediately be handed over to the judge or to the reception centre or similar establishment, in which he is to be kept apart from adult offenders.". (Juvenile Code, art. 170).

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

According to a survey carried out by the Office of the Government Attorney for Human Rights in the 176 detention centres of Colombia, the country's difficult situation in this respect is reflected in the following figures:

Juvenile detainees in Columbia	733
Juvenile detainees convicted (mostly for theft)	177
Juvenile detainees charged	556
Detained for homicide	66
Medellin	
Juvenile detainees	179
Male	145
Female	34
Charged with homicide	24
Charged with kidnapping	3
Charged with theft	18

The rehabilitation division of the General Directorate of Prisons carried out a survey based on a sample of 432 juveniles, which produced the following statistics:

60.4 per cent of the children between 16 and 18 years old charged with homicide, wounding or offences against property have been influenced by an unfavourable family background. The report says that "Although the majority of them were living with members of their family, and in 35 per cent of cases, with their full family group, the families are divided, in conflict, or in some cases even harmful to the development of the children".

Thus only 23.5 per cent enjoy a family environment conducive to social rehabilitation.

In conclusion the survey recommended that in view of the family circumstances described above, juvenile offenders should remain in special centres providing care. In addition, it referred to the need for juveniles to be covered by an overall programme of social readjustment in re-education establishments, and for the State to undertake simultaneously, the re-education of their families.

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose are separate detention facilities used?

As mentioned above, the legislation on juveniles provides that they are to be taken to a specialized reception centre for juveniles that provides the proper guarantees or, if there is no such centre, are to be held in a safe place separate from the accommodation used to detain adults.

F. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home?

See the comments on security measures applicable to juveniles set out in reply to section II, paragraph A of this questionnaire.

G. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or similar procedure?

The procedural guarantees and the right to effective judicial remedy are contained in the Juvenile Code, articles 163 and 164, which lay down general provisions on juveniles who commit, or are accomplices in, a criminal offence:

Article 163. "A juvenile may not be tried as the perpetrator of, or as an accomplice in, an offence not expressly recognized as such by the criminal law in force at the time it was committed. He shall be tried before a competent court previously established, and by the procedure set out in this Code".

Article 164. "As in all other proceedings, in cases involving juveniles the procedural guarantees laid down in the Constitution and the laws shall be observed, especially those relating to the presumption of innocence, the right to a defence and the right to be informed of the reasons for one's arrest".

H. What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances?

As has been indicated throughout this document, the object of the national Government in enacting the new Juvenile Code has been to legislate for the multiple needs of the defence and protection of juveniles at a time when the situation in Colombia is particularly complicated. However, the effective application of these measures, as regards both detention pending trial and the other matters covered by the legislation, requires considerable technical and financial resources, together with intensive education and prevention campaigns directed at the family and society. The adoption of suitable policies and machinery calls for action that will take some time to achieve practical results in view of Colombia's present situation.

III. Least possible use of institutionalization

Is it possible in your country to dispose of juvenile cases by "diversion", that is the disposition of a juvenile case without resorting to formal trial by the competent authority?

See the comments made in reply to section IV, paragraph D of this questionnaire.

IV. Objectives of institutional treatment

B. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

The law in force contains many provisions on these matters. In setting out the rights of juveniles, it mentions, besides the universally recognized guarantees regarding economic, social and cultural rights, the right of juveniles to protection of their physical integrity and the consequent prohibition against subjecting them to torture and other cruel, inhuman or degrading treatment or punishment or to arbitrary detention. It adds that "A juvenile deprived of his liberty shall receive humane treatment, shall be kept apart from adult offenders and shall have the right to maintain contact with his family". Moreover, in criminal cases, a juvenile "has the right to observance of the constitutional and procedural guarantees and to adequate legal assistance for his defence".

On this point, mention should be made, inter alia, of the general provision in article 22 of the Juvenile Code, concerning interpretation of the rules contained in the Code, which states that they are to be interpreted "bearing in mind that their object is to protect juveniles".

D. Do specialized juvenile courts exist, and if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

In Colombia, under the laws in force the following bodies are for the protection of juveniles and the family:

1. The Colombian Institute of Family Welfare and the Family Advocates.

The national family welfare system and its governing body, the Colombian Institute of Family Welfare (ICBF) have their own rules contained in the general laws and decrees, and are also governed by the provisions of the Juvenile Code. Their main object is to protect and defend the rights of juveniles and families throughout the country.

The Family Advocates are public officials serving the ICBF, and their main duties in criminal matters, according to article 277 of the Juvenile Code, are as follows:

(a) To intervene on behalf of the family and juveniles in judicial and extra-judicial cases as the law provides.

(b) To assist juvenile offenders during investigations carried out by the competent magistrate and to put forward any requests considered conducive to their rehabilitation.

(c) To examine and decide cases involving juveniles who need protection because they are in one of the "irregular situations" specified in the Juvenile Code.

(d) To lodge criminal charges with the competent authorities for the commission of offences against juveniles.

(e) To hear in private cases involving criminal offences by juveniles under 12 years of age, and minor offences by juveniles under 18.

(f) To issue opinions as part of the judicial or administrative procedure required by the law.

(g) To request judges and administrative officials to collect the evidence necessary for the performance of their duties.

2. The Juvenile Police.

This is a specialized corps of the national police force whose function is to assist and co-operate with the bodies established by the State for the education, care and protection of juveniles. Its action is mainly concerned with the education and protection of juveniles and providing support for the bodies and institutions authorized by the State to carry out such activities.

3. Office of the Attorney for the Defence of Juveniles and the Family.

Its main function is to exercise legal supervision of the family and juvenile courts, and administrative supervision of the Family Advocates.

4. Permanent Family (Police) Stations.

These were established pursuant to a provision of the Juvenile Code and their main object is to co-operate with the Colombian Institute of Family Welfare and other competent authorities in protecting juveniles in irregular situations and in cases of family conflict.

V. Separation of adults and juveniles in penal institutions

See the comments made on this subject throughout the replies to this questionnaire, in particular those in section II.

F. CUBA

[Original: Spanish]
[25 June 1990]

I. Definition of "juvenile" under national law

A. Under Cuban criminal law a juvenile is any person who has not reached the age of 16 years.

B. In Cuba a person cannot be held criminally responsible unless he or she is 16 years old at the time of committing the punishable act.

(Article 16 of the Penal Code in force, Law No. 62)

- 16 years;

- Law No. 62 of 1988 contains provisions for the imposition, adjustment and execution of penalties for young people up to the age of 27; see the following articles:

Article 17 contains an extenuation rule authorizing the reduction of minimum sentences by half for persons over 16 and under 18 years of age and by one third for persons between 18 and 20.

Article 29.2 prohibits the imposition of the death penalty on young people aged under 20 years.

Article 30.6 provides that young people under the age of 20 shall serve their sentence in prisons specially destined for them, or in separate parts of prisons for older people - a provision which may also be applied to persons between 20 and 27 years of age.

Article 31.3 provides that technical instruction or vocational training shall be given to persons under the age of 27 during their imprisonment.

Article 42.4 prohibits the penalty of exile for persons under the age of 18.

Article 58.1.A Persons sentenced to imprisonment before reaching the age of 20, may be granted conditional release after serving one third of their sentence.

C. As from 20 years of age.

D. In Cuba there are no conditions or procedures of any kind permitting the prosecution of juveniles as adults, since our juvenile care system does not recognize the concept of "juvenile delinquent"; it is replaced by the broader concept of disturbed juveniles and the object of their treatment is not to blame or punish, but to reorientate them and change their behaviour, in order to form a personality consistent with the needs of society.

E. The law does not allow juveniles to be proceeded against for "status offences", that is, for any act that would not be punishable if committed by an adult.

II. Detention pending trial

A. In Cuba detention pending trial is not applicable to juveniles, who are treated by psychopedagogical methods, not by punishment.

B. The law does not permit the police to detain a juvenile without a court order.

In accordance with the provisions of Resolution 9 of the Ministry for the Interior, a juvenile, when detained, must be held for as short a time as possible, in separate accommodation designed for the purpose, and must not be kept overnight; it is also mandatory to locate and inform the juvenile's parents or guardians - or failing them, the prosecutor - so that they may act as required by the circumstances and help the juvenile.

C. None, as explained above.

D. Here, it should be noted that Cuban law has established a fundamental distinction between:

Juveniles under 16 years of age;

Young people of 16 to 20 years of age; and

Young people of 20 to 27 years of age.

Juveniles under 16 years of age are not subject to detention pending trial.

When young people aged 16 to 20 are detained pending trial, they are always held at centres separate from those used for adults or for convicted persons of the same age (16 to 20), who serve their sentences at centres separate from those for adults. These rules, i.e. those for young people aged 16 to 20 years, may also be extended to young people of aged 20 to 27 years.

It will be noted that the separation of young people aged 16 to 20 years has a dual function:

To separate those charged but not sentenced, from those of the same age who have been sentenced;

To separate young people from adults (both those charged but not sentenced, and those already sentenced).

This degree of separation may be extended to young people of 20 to 27 years.

As already stated, juveniles under the age of 16 are not subject to detention pending trial.

E. Here again, the following distinction must be made:

In the case of juveniles exhibiting unsocial or antisocial behaviour which does not constitute significant evidence of serious social alienation or

very dangerous conduct, the Ministry of Education's Provincial Councils for the Care of Juveniles may provide for them to be held temporarily in schools designated by the Councils.

In the case of juveniles taking part in or committing acts which are offences under the law, the National Revolutionary Police may arrange for them to be held provisionally for a period not exceeding 45 days, at juvenile assessment, analysis and guidance centres, for assessment and subsequent appearance before the Provincial Councils for the Care of Juveniles.

F. See previous section.

G. The habeas corpus procedure is available in Cuba for any person improperly deprived of liberty.

III. Least possible use of institutionalization

A. Juveniles are not subject to formal trial or to penal sanctions.

B. In the case of young people over the age of 16, deprivation of liberty may be replaced by other sanctions which do not involve detention (correctional work without detention, restriction of liberty) or by a suspended sentence (conditional remission of penalty). For juveniles below the age of 16, as already stated, the measures take the form of guidance and re-education, which are not penal sanctions imposed by a court.

C. Not known.

D. None.

IV. Objectives of institutional treatment

A. No; there are no such laws in Cuba.

B. We repeat what has been said before, that juveniles are not subject to the criminal law, since the treatment of their acts is not of a penal nature.

C. Continuation of studies under the national education system; sport, competitions between inmates and between similar centres; recreation at amusement centres.

There is keen interest in cultural development through groups of enthusiasts.

D. There are no juvenile courts.

E. No.

F. Juveniles may not be sentenced to deprivation of liberty.

G. No.

H. Provincial Councils for Juveniles.

I. Not applicable.

V. Separation of adults and juveniles in penal institutions

A. The treatment of juveniles with behavioural problems, or having committed acts classed as offences, is not within the penal system.

B. No.

C. No.

D. No.

G. IRAQ

[Original: Arabic]
[6 June 1990]

I. Definition of "juvenile" and national law

A. What is the statutory definition of "juvenile" in your country?

Answer: Article 3, paragraph 2, of the Juvenile Welfare Act No. 76 of 1983 defines a juvenile as a person over 9 but under 18 years of age.

B. What is the age of criminal responsibility in your country?

Answer: 18 years. The minimum age of a juvenile is nine years. There are no age limits other than those mentioned.

C. At what age can a person be indicted for an offence and treated as an adult?

Answer: On reaching 18 years of age.

D. Are there any conditions and procedures under which juveniles can be tried as adults?

Answer: No.

E. Does the law permit juveniles to protest against criminal legislation?

Answer: No.

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

Answer: In the case of serious offences which, under the Penal Code, are punishable by the death penalty.

B. Does the law permit the police to detain a juvenile without a court order?

Answer: No.

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

Answer: Separate detention centres have been established for juveniles and the period of their detention is very short, except in the case of serious offences.

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose, are separate detention facilities used?

Answer: Yes. Detained juveniles are kept completely separate from adult detainees.

E. If the law permits the detention of juveniles, do the police have special facilities set aside for juveniles?

Answer: It is absolutely prohibited for the police to detain a juvenile unless so ordered by a juvenile court.

F. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home?

Answer: There are cases in which juveniles have been released, by a court order, into the custody of their guardians or persons responsible for their welfare.

G. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court in accordance with a legal procedure?

Answer: Yes. A juvenile is entitled to challenge any court order issued against him. In fact, judgements handed down against juveniles in criminal cases, including detention orders, are automatically reviewed by the Court of Cassation.

III. Least possible use of institutionalization

A. Does your country practise "diversion", enabling the disposition of a juvenile case without resorting to formal trial by the competent authority?

Answer: No. There are no alternatives to prosecution. However, careful studies are being undertaken with a view to providing alternatives to prosecution in some juvenile cases.

B. Does your country apply the following measures?

1. Care, guidance and supervisory orders;

2. Probation;

3. Financial penalties;

4. Compensation and restitution;

5. Intermediate treatment and other treatment orders;

6. Orders to participate in group counselling and similar activities;

7. Orders concerning foster care, living communities or other educational settings.

Answer: Our country applies the measures referred to in 1, 2, 3, 4, 6 and 7 above.

IV. Objectives of institutional treatment

A. Are there any laws outside the sphere of criminal law under which a juvenile can be deprived of his liberty, for example in states of emergency or cases relating to migration?

Answer: No.

B. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

Answer: Yes. The Juvenile Welfare Act No. 76 of 1983 defines the objectives and principles of juvenile welfare in articles 1 and 2, in which the objective is defined as an endeavour to curb the phenomenon of juvenile delinquency by protecting juveniles from delinquency, providing them with treatment and promoting their social rehabilitation in accordance with the values and moral principles observed in our society. To this end, the law relies on methods for the early detection of potential juvenile offenders in order to provide them with treatment before they become delinquent. Guardians are responsible for the fulfilment of their obligations towards juveniles. Moreover, juvenile offenders are treated in accordance with scientific and humanitarian principles and their subsequent welfare is catered for as a means to promote their social rehabilitation and prevent a relapse into delinquency.

C. What types of educational or rehabilitative programmes are provided in detention centres for juvenile offenders?

Answer: This question should be answered by the Ministry of Labour and Social Affairs, since it concerns details falling within the field of competence of that Ministry.

D. Do specialized juvenile courts exist and, if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

Answer: Yes. We have specialized juvenile courts and juveniles are tried only before these courts.

E. Can any criminal court or authority other than the juvenile courts deprive juveniles of their liberty? If so, under what circumstances?

Answer: Only juvenile courts are competent to hear juvenile cases.

F. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

Answer: Article 76, paragraph 2, stipulates that the maximum duration of any measure under which a juvenile can be deprived of his liberty is five years if the offence committed is punishable by life imprisonment or the death penalty.

G. Which authority is empowered to order the release of a juvenile offender sentenced to deprivation of liberty?

Answer: The sentence handed down against the juvenile specifies the period of deprivation of liberty, with the possibility of release on probation after two thirds of the sentence has been served, provided that the juvenile detainee has been of good conduct during the period of his detention and is expected to maintain the same good conduct after his release on probation.

H. Which authority determines the institution best suited for the treatment of a juvenile offender?

Answer: The Juvenile Welfare Act specifies these institutions on the basis of their specialized competence in regard to the rehabilitation and education of these juveniles.

I. What obstacles, if any, impede compliance with the principle of promoting the social re-integration of juveniles?

Answer: The principles set forth in the Juvenile Welfare Act are fully complied with and there are no major obstacles to their application.

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults? If so, what are the main obstacles, if any, to full compliance with this principle?

Answer: Special institutions have been established at which juveniles sentenced to a penalty of deprivation of liberty are kept completely separate from adults. No serious obstacles are impeding this separation.

B. Are there any special situations, recognized by the law, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned?

Answer: There are no situations in which juveniles and adults are brought together.

C. Are there exceptional situations in which juveniles are not kept separate from adults because of practical difficulties?

Answer: There are no situations in which juveniles are brought together with adults. There are no practical difficulties in this respect.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against risks of "criminal contamination" from adult offenders?

Answer: There are no "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles, since there are special institutions for juveniles who have been sentenced to a penalty of deprivation of liberty.

H. JAMAICA

[Original: English]
[15 June 1990]

I. Definition of juvenile under national law

(a) A juvenile means a person under the age of seventeen (17) years.

(b) Age of criminal responsibility is twelve (12) years.

(c) A person charged with an offence can be tried as an adult at age seventeen (17) years.

(d) If the juvenile and an adult or adults are jointly charged for an offence they may be tried together.

(e) The law allows juveniles to be proceeded against for status offences. The Juveniles Law, section 13 (1), states:

"Any constable or authorized person may bring before a juvenile court, a juvenile in need of care or protection".

Section 15 states:

"The parent or guardian of a juvenile may with the approval of the Minister, bring a juvenile before a court and where such parent or guardian proves to the court that he is unable to control the juvenile ..."

II. Detention pending trial

A. The law permits the detention pending trial of a juvenile. The Juveniles Law suggests that this should be done if the juvenile is depraved and of an unruly character.

B. 1. The law permits the police to detain a juvenile without a court order if:

(a) "The charge is one of homicide or other grave crime; or

(b) If it is necessary in his interest to remove him from association with any reputed criminal, or prostitute; or

(c) The officer or sub-officer has reason to believe his release would defeat the ends of justice." Juveniles Law 18 (1).

2. The juvenile is to be brought before the next sitting of the court. He/she can be held in police custody for a maximum of forty-eight (48) hours. Thereafter he is transferred to a Place of Safety for Juveniles pending the next court meeting.

C. Juveniles detained pending trial are kept separate from adults but not necessarily from convicted juveniles. The facilities for juveniles provide accommodation for detained and convicted juveniles awaiting placement to correctional centres.

D. About thirty per cent (30%) of juveniles charged with offences are detained pending trial.

E. The Law is clear about keeping juveniles away from adult offenders. The Juveniles Law, section 17, states:

"Arrangements shall be made by the Commissioner of Police for preventing a juvenile, while detained in a police station, or while being conveyed to and from any criminal court, or while waiting before or after attendance in any criminal court, from associating with any adult, not being a relative who is charged with any offence other than an offence with which the juvenile is jointly charged".

F. There are no legal provisions for replacing detention pending trial by the alternative measures mentioned.

G. The advice from the Attorney General's Department is that a juvenile deprived of liberty is entitled to challenge the legality of his detention before a court of law.

H. 1. Juveniles are detained pending trial only in exceptional circumstances. The following would be obstacles that the court would take into consideration:

(a) Whether a juvenile has a fixed address;

(b) Availability of parents/guardians to bail them;

(c) The seriousness of the offence.

H. 2. The authorities empowered to determine the institution best suited for an adjudicated juvenile are:

(a) Department of Correctional Services, Ministry of Justice;

(b) Children's Services Department, Ministry of Youth and Community Development.

1. The full social reintegration of the juvenile who has been deprived of his liberty is one of the goals of the Department of Correctional Services and the Children's Services.

The main obstacle to the full compliance with the principle of achievement of that goal is the lack of resources to implement some of the planned programmes.

Separation of adults and juveniles in penal institutions

A. The law recognizes the principle that juveniles/young persons deprived of their liberty should be kept separate from adults. The Prison Act 1945, section 281, states:

1. There shall be set apart in such prison, as the Governor in Council shall direct, a section thereof (to be known as the Young Prisoners' Section) for the confinement of such young prisoners as the Director may select.

2. The prisoners confined in the Young Prisoners' Section shall, as far as possible, at all times be kept apart from other prisoners.

B. There are no special situations in the law or regulations in which the bringing together of juvenile offenders with adult offenders would be considered to be beneficial for the juveniles concerned.

C. Every effort is made to keep juvenile offenders from adults. Occasionally, however, the remand facility for juvenile offenders is overcrowded and they have to be kept at the police lock-up along with adult offenders. Care is taken to prevent a mix between adults and juveniles, i.e. juveniles and adults do not share the same cell.

D. There are no "mixed" or "multi-purpose" detention facilities.

I. ST. VINCENT AND THE GRENADINES

[Original: English]
[22 May 1990]

I. Definition of "juvenile" under national law

A. Juvenile means a person less than 16 years old.

B. (i) Below age eight there is a presumption of Law of Criminal incapacity. This is absolute.

(ii) Between the ages of eight and fourteen a child is also presumed not to have the capacity to commit crimes but this presumption can be rebutted by evidence.

(iii) Above the age of 14 criminal responsibility requires the same consideration as given to adults.

C. A person above eight years old can potentially be tried as an adult.

D. Yes. Juveniles charged indictably or jointly with one or more adults.

II. Detention pending trial

A. Juveniles are detained by order of the Court pending trial where it is of the opinion that the character of the juvenile merits it and the severity of the offence charged warrants this.

B. Yes, where the charge is (i) homicide or a grave offence or (ii) where there is the necessity to remove the juvenile from the influence of a reputed criminal/prostitute (iii) where the officer forms the view that the ends of justice would otherwise be defeated.

C. Approximately 20-30 per cent of juveniles charged with an offence are detained pending trial, however, the average length of detention is based on the severity of the offence, hence juveniles who committed murder etc. would be held at most three weeks while those on lesser counts of larceny etc. would be released on bail with parental assurety.

D. The law provides for this but there is in fact no separation of juveniles pending trial from convicted juveniles or adults. Once a juvenile who has been charged is not released on bail he is kept with the general prison population.

E. Juveniles are supposed to be treated differently from adults. However, in practice it seems that lack of space/other resources makes this impracticable.

F. Yes.

G. Yes.

H. None.

III. Least possible use of institutionalization

A. No.

B.
1. Available easily
2. Available
3. Not available
4. Available
5. Available
6. Available
7. Available
8. Available
9. Available
10. General prison.

IV. Objectives of institutional treatment

A. No.

B. Yes.

C. (i) In open detention facility - all juveniles who have attained the required educational level are allowed to attend local public schools. For those who have not, the detention facility offers full-time remedial education in a school setting so as to enable the juveniles to achieve the standard required. Additionally inmates participate in the school agriculture project and vocational training in woodwork is available.

D. Yes. Yes.

E. Yes. When a juvenile is brought before the Court in circumstances set out in I. D. above.

F. Unlimited, e.g. a juvenile convicted of manslaughter may receive life imprisonment.

G. No. The courts determine the period of detention.

H. The Juvenile Courts.

I. None.

V. Separation of adults and juveniles in penal institutions

A. Yes. As an alternative to detention facilities.

B. Yes. As an alternative to detention, juvenile offenders are often released into the care of "fit persons" who consent to have care of the offenders.

C. Yes, invariably. Only the usual safeguards vis-à-vis detainees generally protect these juveniles.

D. No. There are in fact no closed detention facilities designed for juveniles. They are thus kept in the only prison. Separation is strictly on the basis of sex and not age.

J. CHAD

[Original: French]
[9 June 1990]

I. Definition of "juvenile" under national law

A. Under Chad law, "juvenile" means a child or young person who has not attained the age of majority, which for the purposes of criminal law, is 18 years.

B. The age of criminal responsibility is set at 18 years (art. 53 of the Chad Criminal Code).

Juveniles up to 13 years old are subject only to measures of protection, assistance, supervision and education (art. 50 of the Chad Criminal Code).

Juveniles aged between 13 and 18 years are subject to imprisonment and fines only when such penalties are deemed necessary (art. 52 of the Chad Criminal Code).

C. A person charged with an offence may be tried as an adult when he has reached the age of 18 years.

D. Yes, there are conditions and procedures under which juveniles may be tried as adults.

Under article 421 of the Chad Code of Criminal Procedure "cases involving juveniles are examined and tried in chambers when there are no adult co-accused". This is the procedure in cases of theft, receiving, etc.

E. No. Chad has no law permitting the prosecution of juveniles for "status offences", i.e. any specific behaviour that would not be punishable in the case of an adult.

II. Detention pending trial

A. The law permits the detention pending trial of juveniles by court order, either for their security or to facilitate investigation of the case.

B. Yes; the law permits the police to detain a juvenile without a court order.

Under article 221 of the Code of Criminal Procedure, "An officer of the police judiciaire (CID) may not detain a person for more than 48 hours. After this period, the person must either be released or brought before the parquet (public prosecutor). The prosecuting magistrate may, however, authorize the detention to be extended for a further 48 hours, if he deems it essential for the success of the investigation".

C. Chad does not yet have any statistics on juveniles charged with an offence who are detained pending trial. We are therefore unable to give an approximate percentage in reply to this question.

D. No. Juveniles detained pending trial are not kept separate from adults or from convicted juveniles. Nor do we use separate detention facilities.

E. No. The Chad police have no special facilities exclusively for juveniles. They are held in the same cells as adults.

F. Yes. There are legal provisions for replacing detention pending trial by alternative measures such as close supervision, intensive care or placement with a family or in an educational setting or home. But in practice, owing to lack of means the State has not yet provided reception facilities.

G. Yes. A juvenile detained by an examining magistrate for more than six months is entitled to do so if the reasons for extending his detention have not been stated in the order. In that case the juvenile applies to the chambre d'accusation (office of the Director of Public Prosecutions), which should release him (art. 420 of the Code of Criminal Procedure).

H. The main obstacles to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances are, among others, the requirements of the investigation or that the offence committed entails a mandatory investigation.

III. Least possible use of institutionalization

A. The people of Chad usually dispose of juvenile cases by extrajudicial means, without resorting to formal trial by the competent authority. But this extrajudicial practice is not yet a recognized institution in Chad.

B. Of all these disposition measures applied to juvenile offenders, with respect for the fundamental rights of juveniles, Chad has recourse only to financial penalties, compensation and restitution.

C. It is not yet possible for Chad to supply the exact percentage of cases involving juvenile offenders in which non-custodial measures are applied. But the courts tend to leave most of the juveniles brought before them at liberty.

D. There are no such obstacles yet, especially as we have not yet set up institutional facilities.

IV. Objectives of institutional treatment

A. Yes; outside the criminal law field, there is Decree 100/PR/1961, which governs the movement of juveniles from one town to another and their admission to cinemas and bars.

B. Yes; the law identifies the principles, interests and objectives that should guide the sentencing and treatment of juvenile offenders. But in practice, owing to lack of means, we are unable to apply them in the spirit of this text.

C. In our country a system of education and rehabilitation of juvenile offenders has not yet been introduced in detention facilities.

E. Yes; a criminal court or an authority other than a juvenile court can deprive a juvenile of his liberty when the offence committed so requires.

F. A juvenile may be sentenced to a maximum of six months' imprisonment.

G. No; a juvenile cannot be sentenced to detention for an indeterminate period.

H . A judge determines the duration of detention of a juvenile. But since we do not yet have any detention facilities, juveniles are usually sent to prison.

I . The main obstacles to full compliance with "the principle that promoting the social reintegration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty", are:

- deprivation of liberty is an obstacle to a juvenile's full development;

- that it has harmful consequences for the juvenile if he is in contact with adult offenders or other juvenile delinquents.

V. Separation of adults and juveniles in penal institutions

A. Yes. The law expressly recognizes the principle that juveniles deprived of their liberty should be kept separate from adults. But the main obstacle to full compliance with this principle is that we are desperately short of accommodation for such separation.

B. No; there are no special situations in Chad recognized by the law or regulations in which bringing together juvenile offenders and adults is considered to be beneficial for the juveniles concerned.

C. Yes, there are situations in which juvenile offenders are not kept separate from adults, because of practical difficulties. There are no safeguards to protect juveniles and prevent abuses.

D. In Chad, juveniles in detention are held in the same premises as adults. No measures are taken to provide juveniles with the programmes best suited to their needs and well-being.

Juveniles are not protected against dangers resulting from contact with adult offenders.

K. TUNISIA

[Original: French]
[19 June 1990]

I. Definition of "juvenile" under national law

A. Juveniles between 13 and 18 years old who are charged with a legally defined crime or offence are not brought before an ordinary criminal court; they can only be tried by a children's court or a juvenile criminal court. A children's court judge is also competent to deal with juveniles aged over 7 and under 13 years (see art. 224 of the Tunisian Code of Criminal Procedure).

B. The age of criminal responsibility in Tunisia is 18 years.

The absolute minimum age limit is seven years (see art. 224 of the Tunisian Code of Criminal Procedure).

C. At the age of 18.

D. No.

E. No.

III. Least possible use of institutionalization

A. No.

B. 1. Care, guidance and supervision: yes.

2. Probation: yes.

3. Community service orders: no.

4. Financial penalties, compensation and restitution: yes.

5. Intermediate treatment and other treatment orders: no.

6. Orders to participate in group counselling and similar activities: yes.

7. Orders concerning foster care, living communities or other educational settings: yes.

8. Commitment to an open detention facility: yes.

9. Commitment to a closed detention facility: yes.

10. Other relevant orders: yes. If the facts relating to the juvenile are established, the children's court judge imposes one of the following measures stating reasons:

(1) The juvenile is placed in the care of his parents, his guardian, the person who was previously in charge of him or a reliable person;

(2) He is placed in an authorized public or private educational or vocational training institution or establishment;

(3) He is placed in an authorized medical or medico-educational establishment;

(4) He is placed in the care of the child welfare service;

(5) He is placed in a boarding-school appropriate for juvenile offenders of school age (art. 241 of the Tunisian Code of Criminal Procedure).

D. His social circumstances: mother or father deceased, illegitimate child, adopted child, etc.

Effective or affective family breakdown;

Unemployment or loss of occupational status;

Degree of gravity of the offence.

IV. Objectives of institutional treatment

A. No.

B. Yes. According to the case, the children's court judge or the juvenile court orders such protection, welfare, supervision and educational measures as seem appropriate. When they consider that the situation and the personality of the offender so require, they may, however, pronounce a penal sentence on a juvenile aged over 13 years. In such cases the sentence is served at a specialized establishment (see art. 225 of the Tunisian Code of Criminal Procedure).

C. A suitable programme taking account of the individual and social circumstances of juveniles, such as:

- A special programme of general education (languages, mathematics, civics, religious education, labour legislation, etc.);

- A graded vocational training programme;

- Educational and socio-cultural assistance for better post-institutional social integration.

F. Twenty years. In the case of a measure under article 241 or a criminal conviction, a juvenile may also be put on probation up to an age not exceeding 20 years (art. 244 of the Tunisian Code of Criminal Procedure).

G. Yes. The Educational Centre may request a review of the sentence after nine months, provided that the juvenile concerned is below the age of 20.

H. The competent judicial authority.

I. Individual physical or psychological problems and in some cases slight mental deficiency;

Objective obstacles: living in surroundings that encourage delinquency, belonging to, and domination by, a group of delinquents, limited employment opportunities or dissatisfaction with certain kinds of employment;

Institutional obstacles.

V. Separation of adults and juveniles in penal institutions

A. Yes.

L. UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[11 May 1990]

(a) The circumstances of the death of any detained, arrested or convicted person (accident, murder, suicide, illness) are thoroughly investigated and the necessary measures taken. The relatives of the deceased are informed of the occurrence so that they have the opportunity to arrange for burial. Execution of sentence is carried out only after a court's judgement has entered into force.

In the correctional labour institutions of the USSR Ministry of Internal Affairs, 3,756 detainees died in 1989 as a result of illness, 118 committed suicide and 348 were murdered or fatally injured by other prisoners. There were no instances of persons in detention being executed other than by the decision of a court.

(b) The penalty of death by shooting is carried out only in accordance with a court's decision and after any petition for clemency by the convicted person has been rejected by the Presidium of the USSR Supreme Soviet.

Juvenile offenders can be sentenced to a maximum punishment of deprivation of liberty for 10 years for serious crimes, but the death penalty is not applicable to them (art. 22 of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics). This form of punishment is provisional and exceptional in the USSR and is applied only for the most dangerous crimes against the State, for premeditated murder under aggravating circumstances and for certain other especially serious crimes. The list of crimes for which the death penalty may be imposed is expected to be reduced in the near future.

(c) An arrest can be made as a restraining measure against a charged person or suspect only with the approval of the procurator.

For some types of administrative offences, administrative detention is imposed in exceptional cases for a period of up to 15 days by a people's court (or people's judge).

Administrative detention cannot be employed in the case of pregnant women, women with children under 12 years of age, persons under 18 years of age, or first and second category invalids.

The law permits the detention of a person suspected of having committed a crime punishable by deprivation of liberty only where there are legally specified grounds. The procurator must either authorize custody within 72 hours or release the person from detention.

A total of 865 persons were held in custody by the organs of inquiry and investigation of the Ministry of Internal Affairs without foundation, and subsequently released because their guilt was not substantiated. In addition, 972 persons were detained for short periods (up to 72 hours) and released because suspicions regarding them were not substantiated. One case of deliberately unlawful detention was reported. Under existing procedural law in the USSR, no arrest can be made without the approval of the procurator or the decision of a court. There have been no cases of forced or involuntary disappearances of persons held in correctional labour institutions.

A special procedure is provided by law for ascertaining the whereabouts of missing persons.

(d) Under Soviet criminal law, torture and other cruel, inhuman or degrading treatment or punishment, unlawful arrest or detention and violent treatment of persons during interrogation are criminal offences (arts. 178 and 179 of the Criminal Code of the RSFSR and corresponding articles of the criminal codes of the other Union Republics).

An inquiry is held into any case of unlawful action by officials that becomes known. In 1989, 51 cases of beatings and other unlawful actions against suspects, charged or convicted persons being held in custody were investigated. The law stipulates that the purpose of inflicting punishment is not to cause physical suffering or to degrade the individual.

(e) No special procedure for the detention (or treatment) of children, human rights advocates, journalists, etc. is provided by law.

(f) In 1988, the number of persons acquitted or whose cases were closed by the investigating authorities, the prosecution or the courts on grounds of rehabilitation totalled 6,336, of whom 2,184 were persons being held in custody.

In 1989 the respective figures were 5,365 and 1,880.

A total of 922 detained persons were released in 1988, and 1,493 in 1989, because suspicions that they had committed crimes were not substantiated.

(g) Militia officers are empowered to bring persons who have committed administrative infractions to a militia station and hold them for up to three hours with a view to stopping such infractions when other measures of influence have been exhausted, and also to establish the identity of the offender and to draw up a report.

Militia officers may bring persons found on the streets or in other public places in a state of heavy intoxication to a medical centre and hold them there until they are sober.

Administrative (preventive) detention for periods of up to 30 days is permitted only in a limited area of the Soviet Union by a Decree of the Presidium of the USSR Supreme Soviet of 23 November 1988, entitled "Urgent measures to restore public order in the Azerbaijan SSR and Armenian SSR". This provision was not actually applied in 1989, however.

(h) People are not detained or imprisoned for freely expressing their convictions if their actions do not constitute an administrative infraction or criminal offence.

(i) There have been no cases of staff members of the United Nations Secretariat being detained or held in custody.

(j) The unlawful use or threat of force by an official is punishable as a criminal offence.

A list of restrictions on the use or threat of force by law-enforcement officers is contained in the Regulations Governing the Soviet Militia and other normative acts.

The law stipulates (art. 13 of the Fundamental Principles of Criminal Procedure of the USSR and Union Republics) that an official may use force in maintaining law and order only in the protection of the interests of the USSR, society and the individual, and solely on condition that he does not exceed the needs of self-defence.

(k) Discrimination against persons released after serving a sentence is prohibited by law.

The law requires that persons released after serving a sentence should be provided with work, in keeping with their profession where possible, by the executive committees of the local Soviets of People's Deputies no more than 15 days after applying for assistance in finding employment. Persons released after punishment are, where necessary, provided with housing.

Persons released from places of confinement upon completion of their sentences or on receiving a pardon enjoy all the same political and other rights as other citizens of the USSR. The State authorities take measures for their social reintegration. Certain limitations of rights are permitted only in respect of especially dangerous recidivists and persons facing trial for serious crimes or for any premeditated crime on two or more occasions. By a Decree of the Presidium of the USSR Supreme Soviet of 26 July 1966, entitled "Administrative supervision by internal affairs organs of persons released from places of confinement", they may be subjected to administrative supervision for up to one year. For this category of persons, temporary restrictions on residence in certain parts of the USSR may be applied. Administrative supervision imposed, in accordance with the law, on persons released from places of confinement is permitted only in cases expressly laid down by law; it is not discriminatory in nature and is designed to prevent crimes and to have an educative effect.

The current normative acts of the Government of the USSR imposing some restrictions on choice of place of residence by certain categories of citizens released from places of detention are now being reviewed with a view to repeal, in accordance with the agreements reached at the Vienna meeting of representatives of States participating in the Conference on Security and Co-operation in Europe.

(1) Correctional labour institutions, including prisons, are placed by law under the authority of the USSR Ministry of Internal Affairs. There is no provision in Soviet legislation for prisons to be privatized.

M. VENEZUELA

[Original: Spanish]
[30 June 1990]

I. Definition of "juvenile" under national law

A. The legal definition of "juvenile" in Venezuela is a person who has not attained the age necessary for full enjoyment of civil rights, i.e. one who has not attained the age of 18 years (age of majority under article 18 of the Venezuelan Civil Code).

B. In Venezuela the age of criminal responsibility is the age of majority (18 years).

The absolute minimum age limit is 18 years.

Age limits for criminal responsibility differing from that of adults are laid down in article 74, paragraph 1, of the Venezuelan Penal Code which specifies that being a juvenile under 21 years and over 18 years old when the offence was committed is considered to be an attenuating circumstance. Similarly, article 3 of the Juvenile Protection Act provides that all persons below the age of 21 who are in the territory of the Republic and, where applicable, all Venezuelan juveniles outside the country are protected by the provisions of Book II of that Act.

C. On attaining the age of 18 years, anyone who commits a crime or offence in the territory of the Republic of Venezuela is tried by the ordinary criminal court and punished in accordance with Venezuelan law. Article 93 of the Juvenile Protection Act provides that the juvenile court shall continue any proceedings initiated, even when the juvenile offender reaches the age of 18 years. The juvenile court judge may order re-educational treatment in special institutions for young adults.

D. There are no conditions and procedures under which juveniles are tried as adults, since under Venezuelan law majority is attained at the age of 18 years. Consequently, anyone who has not attained that age is considered a minor and in this regard comes under the Juvenile Protection Act, which affords him the protection of special laws, provisions and courts; he is not treated as a delinquent and hence is not punished for the offences he commits, but has to undergo re-educative procedures, measures and treatments.

E. Any juvenile who commits any act punishable under criminal law or police regulations is considered a "law-breaker" and as such is subject only to the measures prescribed by the Juvenile Protection Act.

II. Detention pending trial

A. There are no circumstances in which the law permits the detention of juveniles pending trial. Nevertheless, article 118 of our Juvenile Protection Act provides for protective measures, particularly attendance at re-education institutions, which may be open, semi-open or closed.

B. Any police authority informed that a juvenile is in an irregular situation, whether he is abandoned, in danger or a juvenile offender, must immediately proceed to place him in an establishment of the National Juvenile Institute and notify the juvenile court judge and the Attorney for Juveniles (Procurador de Menores) accordingly. The National Juvenile Institute can then take such provisional measures as it considers appropriate. In all police investigations involving persons below the age of 18, an Attorney for Juveniles must be present. The police must notify the juvenile court judge of the action taken within not more than eight days (articles 98, 99 and 100 of the Juvenile Protection Act).

C. Juveniles charged with an offence are not detained in prison pending trial, but are kept in preventive custody. Although article 98 of the Juvenile Protection Act provides that juveniles must be placed immediately in an establishment of the National Juvenile Institute, so that protective measures may be taken forthwith, this does not happen in practice. For in many cases the juvenile is detained pending trial in police custody, until the court orders him to be transferred to the National Juvenile Institute, on the application of his legal representatives or the Attorney for Juveniles, under whose observation and supervision he was held in judicial detention; otherwise, once proceedings have been initiated, the juvenile court judge must try the case within four days.

The percentage of juveniles charged with an offence and detained pending trial varies between 15 and 20 a day. The average length of such detention is no more than 12 days, that is, 8 days for investigation and 4 days for the juvenile court judge to order the appropriate protective measures.

D. Cases involving juveniles are tried only by the juvenile courts and judges and the penalties that may be imposed differ from those for adults; thus juveniles may not legally be committed to national prisons or penitentiaries, so there is no possibility of juveniles and adults being kept together.

The juvenile court judge may apply to juvenile offenders or to juveniles who are in danger, the provisions of article 107 of the Juvenile Protection Act, which deal with the juvenile in the context of the family and the community to which he belongs. These measures include:

(a) Placing the juvenile in the care of his parents, guardian, or responsible relatives;

(b) Probation;

(c) Placement with a family;

(d) Attendance at a re-education establishment;

(e) Attendance at a remedial establishment.

E. As stated in reply to earlier questions, our law does not permit detention by the police, though in practice, as has also been indicated, juveniles caught in the act of committing an offence are generally detained at the Police Centre for Juveniles, or failing that, at a police station (always separate from adults). For this purpose cells are available exclusively for juveniles, who are separated according to sex, age and signs of dangerousness.

F. Yes; the juvenile may be placed in the care of his representative or a foster home. But there is no provision for close supervision or probation, since article 107 of the Juvenile Protection Act treats these as final measures after trial; in exceptional cases, if a juvenile suffers from mental or physical abnormality, the judge may order him to be sent to a remedial institution, though this measure is also treated as a final judgment. All these measures can be ordered by the judge only after the studies of the juvenile's personality have been completed.

G. Articles 49 and 60, together with Clause 5 of the National Constitution and the Organic Law of Protection concerning Constitutional Rights and Guarantees provide for the protection of freedom and personal safety. These constitutional norms apply equally to juveniles and adults. This principle is also embodied in article 101 of the Juvenile Protection Act, which provides that when a juvenile is deprived of his liberty the juvenile court judge, if he has been notified immediately, shall proceed to hear the case. Similarly, under article 102 of the Act, the juvenile must be tried within four days after the initiation of proceedings. Consequently, if a juvenile is detained and the judge is not notified, or if, although notified, he does not hear the case within the prescribed time, the juvenile is perfectly entitled to apply for habeas corpus, as "amparo" is known in such cases.

H. As stated above, police detention of juveniles pending trial is prohibited by our law, though in practice, juveniles may be temporarily detained, owing to lack of accommodation for them in establishments of the National Juvenile Institute.

III. Least possible use of institutionalization

A. Never. Whenever a juvenile is suspected of being in an irregular situation a juvenile court judge must hear the case.

B. There is no degree of availability and application of measures imposed on juvenile offenders by the competent courts. The juvenile courts may apply the following disposition measures:

(1) Placement of a juvenile in the care of his parents, guardian, or responsible relatives;

(2) Probation;

(3) Placement in a family;

(4) Attendance at a re-education establishment;

(5) Attendance at a remedial establishment.

The choice of measure depends on the nature of the irregular situation in which the juvenile is placed.

In Venezuela juveniles who infringe a rule of criminal law or a court order are not considered to be delinquents, since the term "juvenile delinquent" may not be used (article 1, paragraph 6 of the Juvenile Protection Act). The protective measures provided for in the Act are applied to juveniles who are in an irregular situation, whether as offenders or as persons in danger. Such measures include: (a) studies of the juvenile's personality and social background; (b) external counselling or re-education treatment at closed establishments; (c) probation. Community service orders, financial penalties, orders to participate in group counselling and confinement orders are not applied to juveniles.

C. Most juveniles in detention pending trial are handed over to their legal representatives. But if a juvenile commits a second offence he is confined in an institution for evaluation and further treatment.

The percentage of cases in which non-custodial measures are applied to juvenile offenders is 65 per cent per year.

D. As far as possible, the juvenile court judge will ensure that the measures ordered are carried out within the family or the community to which the juvenile belongs.

IV. Objectives of institutional treatment

A. No. Article 60, paragraph 2, provides that no one may be deprived of his liberty for non-fulfilment of obligations whose non-fulfilment is not defined by law as a crime or offence.

B. Yes, the law identifies the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders. Article 75, paragraph 2, of the national Constitution, provides that amparo and the protection for juveniles shall be the subject of special legislation and be

applied by special bodies and courts. Similarly, in the interests of the juvenile, article 1 of the Juvenile Protection Act, establishes his right to live in conditions which allow him to attain his normal physical, psychological, moral and social development.

C. Under article 120 of the Juvenile Protection Act, schooling and vocational training are compulsory in all residential centres for juveniles. The Act also lays down that re-education institutions shall pay attention to the juvenile's family group, in order to prepare the home for his return from the institution.

D. The number and distribution of juvenile courts is sufficient to ensure that all cases involving juveniles are handled by such courts. Jurisdiction over juveniles is exercised by the High Courts for Juveniles (Juzgados Superiores de Menores) and the Courts of First Instance for Juveniles (Juzgados de Primera Instancia de Menores). However, the Public Prosecutor's Department (Ministerio Público) considers it advisable to establish more juvenile courts.

E. No criminal court and no authority other than a juvenile court can deprive juveniles of their liberty or take any other measure in regard to them, since only the juvenile courts are competent to do so. Nevertheless, article 137 of the Juvenile Protection Act provides for the possibility that in judicial districts where there are no juvenile courts, cases that would be within the jurisdiction of such courts may be tried by the court of first instance, depending on the matter in question.

F. A juvenile may be subjected to re-educational treatment for a maximum period of five years. When the sentence of the juvenile court exceeds two years, it must be determined in consultation with the competent high court judge.

G. A juvenile may not be subjected to re-educational treatment for an indeterminate period. The execution of any measures applicable to juveniles is the responsibility of the National Juvenile Institute, and their duration will depend on the results of the treatment, as evaluated by the judge.

H. The authorities empowered to determine the institution best suited for the treatment of a juvenile in an irregular situation are the juvenile court judges and the National Juvenile Institute.

I. The principles governing the rehabilitation of juveniles to turn them into useful members of society and their reincorporation into their community and family environment are fully established in article 1 of the Juvenile Protection Act and subsequently developed in the articles mentioned above, but their practical application is beset with problems, owing to the lack of an effective policy on juveniles, lack of economic resources and, what is more serious, the fact that when juveniles return to their natural surroundings they are again hemmed in by the causes of their deviant conduct: for example, broken homes, lack of parental authority, poverty, overcrowding, lack of moral and ethical principles, lack of culture, etc.

V. Separation of adults and juveniles in penal institutions

A. The State will provide the means and conditions necessary to ensure that the juvenile is not treated as a delinquent and, consequently, is not punished for breaking the law, but made to undergo re-educational procedures, measures and treatments.

One function of the Attorney for Juveniles is to inspect adult detention facilities in order to ensure that no juveniles are detained in them.

B. No. This is expressly prohibited by law.

C. There are two cases in which juvenile offenders deprived of their liberty are kept together with adults because of practical difficulties:

1. Juveniles nearly 18 years old, who are extremely dangerous and have a high rate of recidivism; the juvenile courts order attendance at re-education establishments with non-violent adults, in order to protect the other juveniles detained in such establishments and to prevent the escapes from them which constantly occur.

2. For young people who have attained the age of 18 years and are to undergo or continue with re-education measures, the Juvenile Protection Act prescribes detention in establishments for young adults; but as there are no such establishments at present, they have to be placed in adult establishments.

D. There are no "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles in Venezuela.

II. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS TO THE QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

A. ASSOCIATION MONDIALE DES AMIS DE L'ENFANCE (AMADE)

(Belgian Section)

[Original: French]
[18 May 1990]

I. Definition of "juvenile" under national law

A. A person under 18 years of age.

B. Eighteen years, however, "if the juvenile brought before the juvenile court for an act constituting an offence was over 16 years old at the time of committing the act and the juvenile court finds that measures of custody, protection or education are insufficient", it may decide, giving its reasons, to relinquish jurisdiction and refer the case to the Public Prosecutor for prosecution in the competent court if necessary (Act of 8 April 1965, art. 38). Cases involving road traffic offences committed by juveniles over 16 years of age are automatically tried by the ordinary courts.

C. Eighteen or sixteen years (see B).

D. See B. Approximately 1 per cent of juvenile cases are removed from the jurisdiction of the juvenile courts.

E. The juvenile courts hear:

1. Complaints by persons vested with parental authority or having de jure or de facto custody of a juvenile who, through his misconduct or indiscipline, gives serious cause for dissatisfaction;

2. Applications by the Public Prosecutor concerning juveniles whose health, safety or morality is endangered, either by the environment in which they are being brought up or by the activities in which they engage, or whose education is jeopardized by the behaviour of the persons having custody of them;

3. Applications by the Public Prosecutor concerning juveniles found begging or wandering or habitually given to begging or vagrancy (Act of 8 April 1965, art. 36).

II. Detention pending trial

A. 1. If it is impossible to find a private person or institution able to take the juvenile into care immediately, so that the measures provided for by article 52 cannot be applied, the juvenile may be held provisionally in a place of detention for a term not exceeding 15 days (Act of 8 April 1965, art. 53).

2. If a case is removed from the juvenile curt, the King's Prosecutor (Procureur du Roi) may request the examining magistrate to issue a warrant for the arrest of a juvenile aged over 16 years who is charged with a crime or offence, if the conditions for detention pending trial are met.

B. Yes, if detention is necessary for the maintenance of order or public safety, for the protection of the juvenile or third parties, or for the pursuance of an investigation opened following a crime or offence. Maximum duration: 24 hours (Constitution, art. 7).

C. The Prison Information Bulletin of the Council of Europe for December 1988 mentions 23 juveniles, or 0.4 per cent of the total prison population, held in provisional detention in Belgium. The figures have most probably decreased further since then.

D. Yes.

E. The situation varies from one commune to another. Generally speaking, juveniles are held in facilities separate from those intended for adult detainees.

F. Yes (see II.A 1.). Provisional detention may be ordered only if no alternative measures are possible.

G. Yes. Provisional detention may be ordered only by a juvenile court and is subject to appeal. A detention order may be issued only by an examining magistrate and for a maximum period of five days. The detention order may thereafter be renewed only by the council chamber of the correctional court, which is required to rule each month on whether to continue detention pending trial; an appeal is possible.

H. Juveniles who have committed very serious offences and present a real threat to public safety sometimes have to be kept in provisional custody or detention pending trial because there is no room in a closed reformatory, the possibilities for such placement being very limited.

III. Least possible use of institutionalization

A. Yes, in particular by recourse to the institutions for the social welfare of juveniles.

B. 1. Yes, this measure is very widely applied to juvenile offenders (see III.C).

2. Yes, in the rare cases in which the juvenile court relinquishes jurisdiction and the case is transferred to the correctional court, which may order probation as it does for adults.

3. Yes. The articulation of judicial measures with intervention by social welfare institutions after sentencing is developing rapidly since the institutional reforms which gave the Flemish and French Community Councils competence in matters relating to youth welfare, except as regards, in particular, organization of the juvenile courts and determination of the measures that may be applied to juveniles who have committed an act defined as an offence.

4. Financial penalties are imposed only on juveniles over 16 years of age by the ordinary courts, in the cases referred to in paragraph I.B above. Compensation and restitution may be ordered also by the juvenile courts.

5. See 3 above.

6. Yes; in conjunction with placement or supervision (see 10 below).

7. Yes; these measures are widely used (see III.C).

8. As 7 above.

9. Yes. This measure is little used (see II.H and III.C).

10. The juvenile courts sometimes order juveniles under supervision to fulfil conditions such as regular attendance at an ordinary or special educational institution, performance of educative or philanthropic service suited to their age or resources, or compliance with the pedagogical and medical directives of an educational guidance or mental health centre.

C. This percentage varies from one year to another and it would be necessary to define what is meant by "non-custodial measures".

According to an incomplete but reliable study published in the Revue de droit pénal et de criminologie (February 1990, p. 132), the distribution of measures applied to juvenile offenders is as follows:

Reprimand: 55.3 per cent;

Supervision: 29 per cent;

Placement in the care of a trustworthy person or in a private (open) establishment: 10.2 per cent;

Placement in a State-run establishment (open or closed): 5.5 per cent.

D. Placement in an institution is generally ordered by reason of the absence or deficiency of family environment, or bad relations between the juvenile and his family.

IV. Objectives of institutional treatment

A. A juvenile who enters or stays illegally in Belgium may be imprisoned provisionally pending his expulsion or deportation (Act of 15 December 1980, arts. 25 and 27).

B. The Act of 8 April 1965 on the protection of young persons authorizes juvenile court judges to take only "measures of custody, protection and education".

C. The periods of detention of juveniles pending trial are too short for the execution of education or rehabilitation programmes. The few closed State facilities in which some juveniles are placed try to give them instruction suited to their needs and re-education based on talks and teamwork.

D. Yes, though the juvenile court judges and the social services are often overworked.

E. Yes. See I.B, II.A.2. and II.B.

F. As regards detention pending trial, see II.A and II.G. The duration of such detention is, theoretically, not limited by any rules other than the monthly judicial review and observance of the "reasonable" maximum period provided for by article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Placement in a closed facility is generally ordered for an indeterminate period and may not end until the juvenile reaches 18 years of age.

Beyond this age, measures taken by the juvenile court may be extended, for a maximum of two years, only at the juvenile's request.

In the case of a crime or offence committed by a juvenile aged 17 years, the juvenile court may extend the measure until he attains the age of 20 years.

The juvenile court may at any time rescind or modify the measures it has ordered. In the case of relinquishment of jurisdiction mentioned in paragraph I.B, the juvenile is theoretically liable to the same penalties as an adult, including hard labour for life.

G. See F. above. The duration of measures ordered by a juvenile court is, in principle, indeterminate, whereas penalties imposed by an ordinary court following relinquishment of jurisdiction by a juvenile court are always for a fixed period. The juvenile court itself terminates the measures it has ordered. The King may, by a free pardon, terminate execution of a sentence. The Minister of Justice may grant a conditional release on certain conditions before the expiry of the sentence.

H. The juvenile court.

I. Apart from difficulties peculiar to the juvenile himself and his family, his social reintegration encounters difficulties due to the knowledge other persons may have of his criminal past. In addition, the juvenile offender often has only very inadequate vocational training, which the boarding institutions find it difficult to remedy in a society which is increasingly demanding in this respect.

V. Separation of adults and juveniles in penal institutions

A. Yes; at least as regards juveniles kept provisionally in a place of detention (Act of 8 April 1965, art. 53, para. 2). It is sometimes difficult to comply with the principle of separating juveniles from adult detainees owing to the lack of suitable accommodation and staff.

B. No.

C. Only exceptional situations.

D. No.

B. INTERNATIONAL FEDERATION OF SOCIAL WORKERS

[Original: English]
[15 May 1990]

In the volume of the Federation's International Policy papers which were published in July 1988, the relevant views of the Federation were encompassed in the International Policies on Child Welfare and Youth, as follows:

Child Welfare

"IFSW will concentrate its attention and activity on those children and their families who do not have satisfactory, secure environments; and who find themselves in a marginal situation in society. It will work vigorously to oppose all forms of physical and mental ill treatment (including physical punishment) and neglect of children, and to abolish the imprisonment of minors.

IFSW will promote a change in the age of criminal responsibility, to age 18, and will work towards the establishment of humane small institutions, homes and rehabilitation programmes as an alternative for those young people who are now imprisoned."

Youth

"IFSW recommends in the Justice and Penal system that:

The numbers of juveniles going through the formal system should be identified, and reduced by diversion or interception; the number of special juvenile units in police organizations should be evaluated, and appropriately increased; detention facilities which cater exclusively for youth should be developed; measures to integrate the juvenile/minor offender with the rest of society should be strengthened; proposals should be formulated for decriminalizing certain prohibited acts such as vagrancy and the violation of local laws, where no victims are involved."

Reply to the questionnaire on the Application of International Standards concerning the Human Rights of Juveniles deprived of their liberty from the International Federation of Social Workers member association in Ireland:

I. Definition of "juvenile" under national law

A. There is no term "juvenile" in legislation in Ireland. There are three terms used in the Guardianship of Infants Acts:

Child	i.e. under 16 years
Young person	from 15 to 17 years
Infant	under 21 years

B. Seven years is the age of criminal responsibility. Trial in the Childrens Court up to 16 years of age.

C. Sixteen years.

D. No. Children cannot be tried as adults.

E. Children under 15 can be tried for non-school attendance offences. A male child cannot be charged with rape.

II. Detention pending trial

A. Only under four conditions:

Failure to answer a previous hearing;
Possibility of interfering with a witness;
Possibility of absconding;
No residence within the jurisdiction.

B. Yes. Young persons can be detained for seven hours unless they are being charged under section 30 of the Offences against the State Act when they can be held for up to 48 hours. A parent or guardian must be informed of the detention as soon as is practicable and the young person must receive a summons to Court within 24 hours.

C. Information not available.

D. Yes. However, this area of detention is causing concern at the moment.

E. No. An attempt is made to keep them as separate as possible. A juvenile can be detained on a weekly basis in a detention and assessment centre specifically for young people.

F. No. Not pending trial.

G. Yes. An application can be made to the High Court on a matter of bail.

H. There are only four conditions (mentioned above) under which children are detained, i.e. the general circumstance is that a person is granted bail.

III. Least possible use of institutionalization

A. Yes. The Juvenile Liaison Scheme (JLO) is put into action, i.e. a juvenile is cautioned by a special garda called the Juvenile Liaison Officer.

B. 1. The Health Board Act provides for Care Orders for children i.e. in residential or foster homes.

2. Probation is a widely used option by the Courts in children cases.

3. CSOs are available to those aged 16 and upwards.

4. Financial penalties, compensation and restitution by parents on behalf of children or by children themselves can be a condition of the probation order.

5. Treatment is often used as a condition of a probation order.

6. Conditions of a probation order.

7. A further condition of a probation order can be attendance in special schools, hostels etc.

8. A child can be committed to a special school which is an open detention centre.

9. There are only two closed detention centres for children in Ireland, one male and one female.

10. Supervision under the "Misuse of Drugs" Act.

C. Information not available at present.

D. The principle is adhered to here. It tends to be operated on a tariff basis. Very rarely would a juvenile go directly to custody unless the offence was of extreme gravity or due to extreme public notoriety.

IV. Objectives of institutional treatment

A. The Health Board can place children in care on Voluntary Orders. Care orders can be imposed where abandoned, abused or neglected children can be taken into protective care by local authorities acting as a "fit person".

B. The 1908 Children Act provides sentence guidance for length of committal to Special Schools.

C. For boys in this country there are one closed special school and two open special schools. There is only one centre for girls providing remand, assessment and long term care. All these centres provide schooling and care for children. Individual programmes are drawn up to meet the needs of each child.

D. Specialized children's courts exist in Dublin, Limerick and Cork. In all other courts, children's cases are held in camera either before or after the general court list.

E. No.

F. A young person can be sentenced to life for murder. There is a mandatory sentence of life for murder: however, in most juvenile cases a plea of manslaughter is accepted.

G. Yes. A young person can be held at the pleasure of the Government in cases of insanity. The Court has the authority to sentence this upon receipt of evidence from medical experts.

H. The Court, under the auspices of the Department of Justice and with the advice from multidisciplinary reports determines the institution best suited for the treatment of a juvenile offender.

V. Separation of adults and juveniles in penal institutions

A. Yes. Children are kept separate from adults. However, a child under 16 years can be imprisoned on a charge of unruly behaviour.

B. On an unruly charge a child can be imprisoned in an adult prison but would be kept in a separate section.

C. No.

D. No.

Reply to the questionnaire on the application of international standards concerning the human rights of juveniles deprived of their liberty from the International Federation of Social Workers member association in Kuwait:

I. Definition of "juvenile" under national law

The definition of "juvenile" is found under the Kuwaiti law on juveniles of 1983.

A. What is the legal definition of "juvenile" in your country?

A juvenile, either male or female, who has not completed the age of 18.

Delinquent juvenile: a juvenile who has completed the age of seven and has not yet completed the age of 18, who has committed an act punishable by law.

Susceptible juvenile: any juvenile found begging or who has committed acts linked to prostitution, mingled with homeless persons, habitually runs away from home, has no means of living, is disobedient to his parents or has no settled place of residence.

B. At what age may a person charged with an offence be tried as an adult?

When 18 years old

C. At what age may a juvenile charged with an offence be tried as an adult?

When 15 years old

D. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

If a juvenile who has completed the age of 15 but has not yet completed the age of 18 has committed a crime which is punishable by death or life imprisonment, the judge will order his imprisonment for a period not exceeding 10 years. If he has committed a crime which is punishable by temporary imprisonment, the judge will order his imprisonment for a period not exceeding half the maximum period legally determined for an adult defendant.

E. Does the law allow juveniles to be proceeded against for "status offences", that is, any specific behaviour that would not be punishable if committed by an adult?

There is no provision in the law concerning this matter.

II. Detention pending trial

A. Under what circumstances does the law permit detention pending trial of juveniles by court order?

The law provides that if a juvenile commits a crime or a misdemeanour, the judge will order such measures as having him lodged in an institution for juvenile care or in a shelter for treatment.

The court may order that the concerned juvenile be lodged in a recognized institution which is specialized in taking care of susceptible juveniles.

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

Police are not permitted to detain a juvenile, unless by order of the court.

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

The frequency of arrest and release of juveniles makes it difficult to determine this percentage in relation to the total number of juveniles, but the average duration of detention ranges between one and three months.

D. Are juveniles detained pending trial kept separate from adults and convicted juveniles? For this purpose are separate detention facilities used?

Yes. There is a special home for detained juveniles, made use of by a juvenile prosecution order to imprison the juvenile provisionally; it is called an "observation home" and is attached to the Ministry of Social Affairs and Labour.

E. If the law permits detention of juveniles by the police, do the police have special facilities exclusively for juveniles?

No. This question has been answered.

F. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or an educational setting or home?

Yes, there are alternative provisions for detention. The judge may choose one of these, such as scolding or delivery to the guardian plus the judicial test: a juvenile may be sentenced but the sentence be suspended and the juvenile referred to his family; if he commits any act that violates the law, he will be jailed for both acts, otherwise the case will be dismissed.

Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or a similar procedure?

No, because detention is applied within the limits of the law and in the interest of the juvenile.

What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances?

Detention is applied within minimum limits and for a period required by public interest. It is preferable to place the juvenile in the natural family, since it is considered the most suitable to look after the juvenile; but if, for some reason (death, broken family, imprisoned father) the family is not able to provide suitable care for the juvenile, he will be detained in a social institution that provides educational, social, psychological and recreational care.

III. Least possible use of institutionalization

A. Is it possible in your country to dispose of juvenile cases by "diversion", that is, the disposition of a juvenile case without resorting to formal trial by the competent authority?

No.

B. What is the availability and extent of application to juvenile offenders of the following disposition measures:

1. Care, guidance and supervision orders;

2. Probation;

3. Community service orders;

4. Financial penalties, compensation and restitution;

5. Intermediate treatment and other treatment orders;

6. Orders to participate in group counselling and similar activities;

7. Orders concerning foster care, living communities or other educational settings;

8. Commitment to an open detention facility;

9. Commitment to a closed detention facility;

10. Other relevant orders.

- No

- Care and guidance

- Social probation
- Financial penalties
- Immediate treatment
- Placement in social institutions
- Provisional detention
- Delivering the juvenile to a trusted family

C. In what percentage of cases are non-custodial versus custodial measures applied to juvenile offenders?

There is no data available.

D. What are the main obstacles, if any, to full compliance with the principle that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period?

IV. Objectives of institutional treatment

E. Can a criminal court or any other authority other than a juvenile court deprive juveniles of their liberty? If so, under what circumstances?

No other court than the juvenile court can consider juvenile cases.

F. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

Not more than 30 days; this may be renewed for another period, or the youth could be delivered to his guardian, according to the case.

G. Can a juvenile be sentenced to detention for an intermediate period? If so, which authority determines when the juvenile offender can be released?

It is not permitted to detain a juvenile for an unlimited period.

H. Which authorities are empowered to determine the institution best suited for treatment of a juvenile offender?

Juvenile court is the authority that determines placement of a juvenile in an institution best suited for him.

I. What are the main obstacles, if any, to full compliance with the principles that promoting the social reintegration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty?

There are no obstacles.

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles should be kept separate from adults? If so, what are the main obstacles, if any, to full compliance with this principle?

Yes. Juveniles are kept separate from adults and are placed in institutions established for them.

B. Are there any special situations, recognized by the law, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned? If so, please describe and provide the frequency of these situations in practice.

No. Juvenile law is applied to those whose age ranges between 7 and 18. It is not permitted to bring together juvenile offenders with adults in any case.

C. Are there exceptional situations in which juvenile offenders are not kept separate from adults because of practical difficulties? If so, please provide the frequency of these situations in practice and explain the safeguards, if any, applied in order to protect the juveniles and prevent possible abuses?

No. Juvenile care institutions are sufficient to shelter and look after delinquent juveniles and susceptible juveniles; they are not permitted to mingle with adults.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against risks of "criminal contamination" from adult offenders?

No. "Mixed" institutions do not exist.

C. RÄDDA BARNEN

[Original: English]
[22 May 1990]

I. Definition of "juvenile" under national law

A. There is no legal definition of a juvenile. We do have, however, a law with special rules for young offenders, i.e. juveniles below the age of 18.

B. The age of criminal responsibility in Sweden is 15 years. There are no other age limits as regards the assessment of responsibility. There are, however, certain age limits when it comes to the choice of sanctions for juveniles (cf. below IV B).

C. The main rule in Sweden is that juveniles should not be prosecuted in court. They should instead be given remission from prosecution and be subject to measures from the social authorities. If, for some reason, remission from prosecution is not possible there is no other age limit than the age

of criminal responsibility, i.e. 15 years of age. Against children below the age of 15 so-called evidentiary proceedings can be taken in court in order to clarify the question of responsibility. No sanction can, however, be passed by the court in these cases.

D. We have a law with special rules for young offenders. This law contains certain rules of procedure if someone below the age of 18 has committed a crime. In these cases the Prosecutor investigates the basis for a possible remission from prosecution. In 1988 there were 15,887 remissions from prosecution for the age group 15-17 years of age. If the juvenile is prosecuted the law states that the court must hold the main hearing within two weeks. The parents are to be informed. A counsel for the defence shall always be appointed for the juvenile if there is a reason to adjudge other sanctions than fines and if it is not clear that he does not need any counsel for the defence.

E. No.

II. Detention pending trial

A. A person below the age of 18 may only be detained if there are extraordinary reasons.

B. A person who is not arrested or detained is not obliged to remain for questioning for more than six hours or, if it is extremely important that he is available for continuous questioning, a further six hours (RB 23:9). A person below the age of 15 is not obliged to remain for questioning for more than three hours or, if it is of extreme importance for the investigation, a further three hours.

C. The number of those under age (i.e. aged 15-17) detained during 1985-1987 was about 50 per year but increased in 1988 to 91 and was 70 during the first half of 1989. The proportion of persons under age detained out of all persons detained was 3 per cent in 1989 (compared with 2 per cent in 1987 and 4 per cent in 1982). The reason for the increase in the number of juveniles detained in 1988 is believed to be the changed rules which came into effect in April 1988 in order to shorten the time-limit for court trials as regards sentencing procedures for coercive measures. Rädda Barnen has no information regarding the average length of these deprivations of liberty but as the number of juveniles who have been placed in LVU homes has not gone down since the reform, the times for deprivation of liberty have probably not become longer than before the reform.

D. Sweden tries to avoid detention of juveniles and instead takes care of them in accordance with LVU and places them in special homes. Should, however, detention be necessary, paragraph 3 of the Act (1976:371) regarding the treatment of detained and arrested persons etc. is applicable and this states that the detainee, especially if he is below the age of 21, shall be kept in custody in such a way that he is not subject to unsuitable influence from other detainees. There are, however, no special juvenile custodial premises and no special rules for the placing of juveniles who have been apprehended, arrested or detained. The Swedish custodial premises are built in a way which does not allow a lot of social contacts between the detainees.

In accordance with paragraph 3 of the Act (1976:371) regarding the treatment of arrested and detained persons, a detained person who wishes to stay together with one or more other detainees shall "be given an opportunity to do so to a reasonable extent, local conditions permitting".

E. The police can only apprehend a suspect. The apprehension shall with all possible speed be reported to the prosecutor who, following an examination of the apprehended person, has to decide immediately about the question of arrest. As far as I am aware there are no special premises for arrested juveniles.

F. Yes, the main rule is that juveniles are not to be detained. Usually the social authorities are called in when a person under age is suspected of a crime. In a case where an apprehension of a juvenile must take place this must primarily be carried out by the social authorities placing him in a juvenile home. There is also a possibility for the Social Welfare Committee to decide that the juvenile is to be in regular contact with a specially appointed contact person. Other alternatives available - and which are given by the court - are travel prohibition and duty to report. These coercive measures can be combined with regulations and conditions.

G. The court decides on detention, in the first instance the district court. Appeals can be made on all decisions regarding detention. An appeal regarding detention does not have any time-limit.

H. There must be extraordinary reasons for the detention of a person below the age of 18. The courts are also very restrictive when it comes to the detention of juveniles. Since the respite in connection with the examination of the question of detention has been shortened, more juveniles have, however, been detained. The reason for this is probably that the social authorities do not have the time to arrange for a place in a home in the short time now available.

III. Least possible use of institutionalization

A. Yes, the main rule is that juveniles should not face a court but be given prosecution remission.

B. 1. Such measures shall be taken by the social authorities in accordance with the Social Services Act.

2. Probation can be considered but only after it has been established that it is not sufficient to hand over the juvenile for care in accordance with the Social Services Act, impose fines or a conditional sentence.

3. Trials are going on with community service in certain places in the country. Community service is, however, intended as a replacement for prison. As a prison sentence is used only in exceptional cases for juveniles, community service will not be of any great importance for the 15-17 age group.

4. The police an request the juvenile to take measures in order to remedy or limit the damage caused by a crime if the juvenile has confessed to the crime or it is evident that he has committed the crime. The Prosecutor can order a summary punishment for the juvenile. When assessing whether remission from prosecution is to be given, the Prosecutor shall especially

heed the juvenile's desire to compensate the injured party for damage which has occurred as a result of the crime or by remedying or limiting the damage. The court can also, in the case of conditional sentence or probation, prescribe that the person sentenced shall help the injured party with certain work in order to remedy or limit the damage.

5. The court can link a judgement of probation to certain regulations regarding for example care and treatment, abode or dwelling, work, other employment or education.

6. The social authorities can decide that the juvenile shall participate in open types of treatment.

7. See 5.

8. Does not exist.

9. Detention can be used as an exception (cf. II F).

C. Rädda Barnen does not have any percentage figures for this. The only figures are taken from the court organization's evaluation of the recently carried out detention reform (p. 28). In this it is stated that the number of persons aged 15-17 who were suspected of crimes were 9,240 in 1987 and 9,533 in 1988. Of these, 52 were detained in 1987 and 91 in 1988, i.e. 0.5 per cent and just below 1 per cent respectively of all juveniles suspected of crimes.

D. This question does not concern the use of detention and should therefore be put to the Ministry of Health and Social Affairs.

IV. Objectives of institutional treatment

A. According to the Aliens' Act, juveniles can also be taken into custody or, if it is sufficient, be put under charge.

B. Yes. It is stated for example in BrB 29:3 that in the assessment of the punishment value of a crime it should be taken into account as an extenuating circumstance if the accused's actions have been connected with his evident lacking of development, experience or judgement. If someone has committed a crime before he is 21 years of age his youth shall, in accordance with Brb 29:7, be considered especially when it comes to the meting out of punishment. The court may in this case adjudge a milder punishment than prescribed for the crime. In addition, exceptional circumstances are required in order to sentence someone to prison for a crime he had committed before he was 18 years of age. For crimes committed after their eighteenth birthday but before the twenty-first the court may only sentence a person to prison if consideration is given to the punishment value of the crime or there are special circumstances for it.

C. We have unfortunately not been able to obtain any answer but we are working on it. Should we obtain a reply we will inform you.

D. No.

E. The general courts can deprive the juvenile of his freedom either by detention or by giving the juvenile a prison sentence. The county courts can deprive the juvenile of his freedom by deciding that the juvenile is to be taken into care. The decision of the county court can be preceded by a decision by the Social Welfare Committee or its Chairman about immediate apprehension. Such a decision shall be submitted to the county court within a week.

F. The only limitation set out in the law text is that a person may not be sentenced to a lifetime in prison for any crime which he has committed before his twenty-first birthday (BrB 29:7). In theory a juvenile can be sentenced to the longest prison term which can be given which is 10 years or, as common punishment for several crimes, 14 years. This is, however, not done in practice as the courts, when handing out sentences, especially take the youth of the offender into consideration.

G. No.

H. Social Welfare Committee or the National Correction Administration.

I. We have unfortunately not been able to obtain any answer but we are working on it. Should we obtain a reply we will inform you.

V. Separation of adults and juveniles in penal institutions

A. According to paragraph 8 of the Act (1974:203) on the correctional system in institutions, special consideration shall be given when placing an offender who is not 21 so that he is kept apart from such inmates who can have an injurious effect on his adaptation into society. There is thus no unconditional ban against keeping juveniles with adults. Such a ban without exception would also in certain cases be in conflict with the juvenile's own interests. In a couple of correctional institutions they have aimed the activities at young persons who have been sentenced to long sentences. Should these activities be of use for an older offender as well there is no reason why he should not be placed in such an institution as well.

B. No.

C and D. We have unfortunately not been able to obtain any answer but we are working on it. Should we obtain a reply we will inform you.

D. REGIONAL COUNCIL ON HUMAN RIGHTS IN ASIA

[Original: English]
[11 May 1990]

The Regional Council has submitted information on the law concerning juveniles in detention in Malaysia, the Philippines and Singapore. This information is available for consultation in the files of the Secretariat.

III. INFORMATION PROVIDED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS

[Original: French]
[8 May 1990]

1. The mandate of the International Committee of the Red Cross (CICR) is to protect and assist the military and civilian victims of armed conflicts. It is in this particular context that it concerns itself with the fate of children who, because of their vulnerability, need special protection. By its activities on behalf of the victims of armed conflicts it tries to give children better protection and to promote their rights.

2. No fewer than 25 provisions of the 1949 Geneva Conventions and their additional Protocols of 1977 recognize the importance of special protection for child victims of armed conflicts.

3. Among these provisions mention should be made of article 77, paragraph 4 of Protocol I, which provides that: "If arrested, detained or interned for reasons related to the armed confict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units ...". This provision complements the relevant rules contained in human rights instruments, making the principle also applicable in the exceptional situations constituted by armed conflicts.

4. The activities of the CICR aim at respect for humanitarian law when they are concerned with the victims of armed conflicts in general and with children in particular. Even when the CICR is acting outside situations formally covered by humanitarian law, its activities aim at attaining maximum protection for the victims of such situations.

IV. INFORMATION PROVIDED BY THE FRIENDS WORLD COMMITTEE FOR CONSULTATION

[Original: English]
[15 June 1990]

1. Throughout the history of our faith, Friends have visited prisoners and assisted those released from prison. As many of the men and women we meet in prisons and detention centres are young adults, it should not be surprising that many of them share experiences with us relating to how they were processed through youth courts, prisons and programmes. It is the resilience of their spirit that offers hope for all of us who wish to enhance the rights of youth in society.

2. When Governments confront the problem of youth crime, they often frame their questions and responses to ensure adequate safeguards are provided for people and the community to protect them from the criminal activities of young offenders. This approach is inconsistent with the need to correct the structural oppression of young people, and ignores the fundamental responsibility of any community to include - not exclude - their youth.

3. Changes to the standards of human rights for young offenders are often influenced by the public's emotional response to human tragedies. Recently in Canada, the federal Government toughened criminal legislation against young offenders. As a result of the sensationalized coverage of events involving young offenders, the Government cited the need to "take drastic measures ... to return confidence in our (the) judicial system".

4. Should Governments, as their main objective, generate confidence and respect for the judicial system? Is the essence of community life diluted by a narrow focus on "law and order" in dealing with young offenders? We are not convinced that imposing drastic changes to criminal law, such as the Young Offenders Act (YOA), will return confidence in the judicial system, nor do we see this as the most important objective. For many who have experienced the justice system firsthand as victims or offenders (and families of victims and offenders), human needs are often short-changed by rules and procedures of law. Such experience generates little, if any, respect for the judicial system.

Public opinion on crime control? 41 per cent advocate job creation!

5. While legislating changes towards harsher sentencing will be seen by some politicians to reduce or eliminate our social problems of crime, public surveys do not always reflect this as the main priority. The Canadian Sentencing Commission conducted a public opinion survey in 1985 and 1986 on how crime is most effectively controlled (refer to appendix A, table 6, available for consultation in the Secretariat). Forty-one per cent suggested a reduction in unemployment while 10 per cent urged an increase in social programmes and 13 per cent an increase in the use of sentencing alternatives such as restitution and community service. As 27 per cent thought harsher sentences would make a difference, only 4 per cent urged an increase in police.

Society is responsible for crime control say 47 per cent surveyed

6. The same survey asked: "Although reducing crime is a responsibility shared by many, where do you think the main responsibility lies?" (refer to appendix A, table 13, available for consultation in the Secretariat). The responses were revealing. Only 24.3 per cent believed the courts were responsible for controlling crime and 8.3 per cent believed police to be responsible. But 47.2 per cent felt that "society generally" was responsible for crime control. This poses a significant challenge to local communities and Governments.

7. Meeting such a challenge requires a community to support a vision rooted in values of caring and co-operation. The spirit of a caring community is not to be "protected" by a bolstered police force and greater use of legalized punishment, but nurtured by the extension of economic rights such as meaningful employment and a secure home. A caring community is prepared to work proactively with public fear, human conflicts and violence through non-violent intervention and reconciliation. These are the real priorities that set the stage for peace in the community. Skilled legislators in criminal law will achieve little if community supports are not in place to care for those with the most need: young offenders and their families and victims and their families.

8. Legislation offers few promises and little hope in supporting the rights of young offenders. In Canada, for example, the original design enshrined in a new criminal code entitled the Young Offenders Act (YOA - 1984), discouraged the use of custody in sentencing and inspired the need to develop alternatives. The spirit of this legislation reflects an understanding of the destructive and dangerous results of prison sentences on young people. Section 24 (5) of the YOA states:

> "The youth court shall not commit a young person to secure custody unless the court considers a committal to secure custody to be necessary for the protection of society having regard to the seriousness of the offence and the circumstances in which it was committed and having regard to the needs and circumstances of the young person."

9. Six years later under this law, however, the use of prison sentences has grown to be the second most frequent disposition rendered in Canadian youth courts (March 1989). Given that no more than 9 per cent of young offenders are involved in violent offences, the numbers imprisoned demonstrate a gross imbalance of power levied against young people.

10. The imprisonment of young offenders is a source of many abuses of power. Administrative incompetence often results in inadequate support to staff. Tragic events that shock the public and prompt waves of political protest come as no surprise to those who serve on the front line with imprisoned youth. In response to an incident which resulted in the five deaths of seven youths who escaped from a Toronto detention centre, union representative Leah Casselman spoke on behalf of the staff. Casselman explained "York Detention Centre has had a lot of problems with understaffing and a lack of funding" (see Globe & Mail, 5 February 1989).

11. Such events point to the failure of administering "law and order" when dealing with youth and indicate that staff in youth detention centres need to be well trained and cared for. If placing people in positions where they are confronted with daily violent outbursts, government employers must care enough for staff to ensure each staff person is trained in non-violent intervention skills. The human rights of imprisoned young offenders will always be in jeopardy if detention centre staff are not provided training that empowers them to deal constructively with potential conflicts and violence.

12. Communities need to provide young people - particularly young offenders - with opportunities to participate and take responsibility in ways that affirm positive values. With respect to the work being accomplished to enhance the human rights of children and youth, we ask Governments and communities to consider the following:

First: Are we doing everything to reinforce caring and co-operative attitudes among our young people?

Second: What measures would we propose to deal with young offenders that would be consistent with the value we place on all young people?

Note by the Secretariat

1. The Secretariat also received replies to the questionnaires from the International Federation of Social Workers Member Associations in Canada, Mauritius, the Netherlands and Uganda. These replies are in long hand and can be made available for consultation from the files of the Secretariat.

2. Information was also received from the Office of Juvenile Justice of the Ministry of Justice of Italy and "Carcere e Communitá", a non-governmental organization. The reply is available for consultation in the files of the Secretariat in its original version (Italian).

Annex

QUESTIONNAIRE ON THE APPLICATION OF INTERNATIONAL STANDARDS CONCERNING THE HUMAN RIGHTS OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. Definition of "juvenile" under national law

A. What is the statutory definition of "juvenile" in your country?

B. What is the age of criminal responsibility in your country? Please describe:

1. Absolute minimum age limit;

2. Other age limits, if any, for criminal responsibility, differing from that of adults.

C. Are there any conditions and procedures under which juveniles are tried as adults? If so, what are they and how frequently does this occur in practice?

D. Does the law allow juveniles to be proceeded against for "status offences", that is, any specific behaviour that would not be punishable if committed by an adult? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 3.1.)

II. Detention pending trial

A. In what circumstances does the law permit the detention pending trial of juveniles by court order?

B. Does the law permit the police to detain a juvenile without a court order? If so, in what circumstances and for how long?

C. In practice, what percentage of juveniles charged with an offence are detained pending trial, and what is the average length of this detention?

D. Are juveniles detained pending trial kept separate from adults and from convicted juveniles? For this purpose, are separate detention facilities used? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.4.)

E. Are there legal provisions for replacing detention pending trial by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 13.2.)

F. Is a juvenile deprived of liberty entitled to challenge the legality of the title of detention before a court by habeas corpus, amparo or similar procedure?

G. What are the main obstacles, if any, to full compliance with the principle that detention pending trial should be imposed only in exceptional circumstances?

III. Least possible use of institutionalization

A. Does your country practise "diversion", enabling the disposition of a juvenile case without resorting to formal trial by the competent authority? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 11.1.)

B. What is the availability and extent of application to juvenile offenders of the following disposition measures:

1. Care, guidance and supervision orders;

2. Probation;

3. Community service orders;

4. Financial penalties, compensation and restitution;

5. Intermediate treatment and other treatment orders;

6. Orders to participate in group counselling and similar activities;

7. Orders concerning foster care, living communities or other educational settings;

8. Commitment to an open detention facility;

9. Commitment to a closed detention facility;

10. Other relevant orders.

(See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 18.1.)

C. In what percentage of cases are non-custodial versus custodial measures applied to juvenile offenders?

D. What are the main obstacles, if any, to full compliance with the principle that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 19.1.)

IV. Objectives of institutional treatment

A. Does the law identify the principles, interests and objectives that should guide sentencing and treatment of juvenile offenders?

B. What types of educational or rehabilitative programmes are provided in detention facilities for juvenile offenders?

C. Do specialized juvenile courts exist, and if so, is their number and distribution sufficient to ensure that all cases involving juveniles are handled by such courts?

D. Can any authority other than a juvenile court deprive juveniles of their liberty? If so, under what circumstances?

E. What is the maximum period of deprivation of liberty to which a juvenile can be sentenced?

F. Can a juvenile be sentenced to detention for an indeterminate period? If so, which authority determines when the juvenile offender can be released?

G. Which authority determines the institution best suited for the treatment of a juvenile offender?

H. What are the main obstacles, if any, to the full compliance with the principles that promoting the social reintegration of juveniles and encouraging their assuming constructive roles in society are the essential objectives of deprivation of liberty? (See Convention on the Rights of the Child, art. 40; United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.1.)

V. Separation of adults and juveniles in penal institutions

A. Does the law expressly recognize the principle that juveniles deprived of their liberty should be kept separate from adults? (See United Nations Standard Minimum Rule for the Administration of Juvenile Justice 26.3.) If so, what are the main obstacles, if any, to full compliance with this principle?

B. Are there any special situations, recognized by the law, in which bringing together juvenile offenders with adults is considered to be beneficial for the juveniles concerned? If so, please describe and provide the frequency of these situations in practice.

C. Are there exceptional situations in which juvenile offenders are not kept separate from adults because of practical difficulties? If so, please provide the frequency of these situations in practice and describe the safeguards, if any, applied in order to protect the juveniles and prevent possible abuses.

D. Do "mixed" or "multi-purpose" detention facilities designed for both adults and juveniles exist? If so, what measures are taken to provide juveniles with the programmes best suited to their needs and their well-being, and how are they protected against risks of "criminal contamination" from adult offenders?